SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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1 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B"
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Thursday, August 19, 1943.

Met, pursuant to notice, at 9:30 o'clock a. m.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances

G. Thomas Dunlop, 929 E Street NW., Washington, D. C., representing Capital Transit Company, respondent;

Florence S. Volkman, 1407 L St. NW., Washington, D. C., representing Local No. 1, United Federal Workers of America, CIO, Intervenors;

W. A. Whittlesey, 2686 Marcey Road, Arlington, Virginia, representing Washington, Virginia & Maryland Coach Company, respondent;

E. Barrett Prettyman, 822 Connecticut Ave., Washington, D. C., representing Capital Transit Company, respondent;

Col. Elbert M. Barron and Captain Paul S. Davis, War Department, Washington, D. C., representing the Secretary of War and the Secretary of the Navy.

2 H. E. Ketner, State Office Bldg., Richmond, Virginia, appearing especially for State Corporation Commission of Virginia on questions of jurisdiction and procedure;

Frederick G. Hamley, 7413 New Post Office Bldg., Washington, D. C., appearing especially for State Corporation Commission of Virginia;

Franklin K. Lane, 822 Southern Bldg., Washington, D. C., appearing for Arlington & Fairfax Motor Transportation Co., respondents;

Wilmer A. Hill, 238 Transportation Bldg., Washington, D. C., appearing for Arlington & Fairfax Motor Transportation Co., respondents;

Robert E. Quirk, 1116 Investment Building, Washington, D. C., appearing for Alexandria, Barcroft & Washington Transit Co., respondents;

H. G. Charrington, appearing for the Civil Aeronautics Administration;

J. M. Goode, appearing for the Public Utilities Commission of Arlington County;

Harry A. Grant, appearing for the Arlington Utilities Commission.

PROCEEDINGS

4 Commr. Patterson: The Interstate Commerce Commission has assigned for hearing at this time and place, Docket No. 28991, Passenger Fares between the District of Columbia and nearby Virginia.

This is an investigation instituted at the request of the Secretary of War into the reasonableness and lawfulness or otherwise of fares charged for interstate transportation of passengers between points in the District of Columbia on the one hand and The Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point and the Washington National Airport, and intermediate points on the other hand.

Will the parties please announce their appearances?

Respondents first.

Mr. QUIRK. Robert E. Quirk, Investment Building, Washington, D. C., with Alexandria, Barcroft & Washington Transit Company.

Mr. HILL. Wilmer A. Hill, Transportation Bldg., Washington, D. C., appearing for Arlington & Fairfax Motor Transportation Company, respondent.

Mr. LANE. Franklin K. Lane, Southern Bldg., Washington, D. C., appearing for Arlington & Fairfax Motor Transportation Company.

Mr. PRETTYMAN. George T. Dunlop and E. Barrett
5 Prettyman, for the Capital Transit Company.

Commr. PATTERSON. Are there any other appearances for the respondents?

Col. BARRON. E. M. Barron, Colonel, U. S. Army.

Commr. PATTERSON. I would like to get all of the respondents in first, please, sir.

Are there any other appearances for the respondents?

(No response.)

All right, then.

Col BARRON: I am appearing for the Secretary of War and the Secretary of the Navy, also appearing for the Secretary of War and the Secretary of the Navy is Captain Paul S. Davis, Judge Advocate General's Department of the Army.

Commr. PATTERSON. Are there any other appearances for the Army or Navy?

(No response.)

Are there any other appearances?

Mr. KETNER. H. E. Ketner, State Office Building, Richmond, Virginia, especially appearing for the State Corporation Commission of Virginia, only on the questions of jurisdiction and procedure. Mr. Frederick G. Hamley, Assistant General Solicitor of the National Association of Railroad and Independent Comissioners, is appearing along with me, especially for the Virginia Commission.

6 Mr. WHITTLESEY. W. A. Whittlesey, appearing for the Washington, Virginia & Maryland Coach Company.

Mr. CHARRINGTON. H. G. Charrington, appearing for the Civil Aeronautics Administration.

Commr. PATTERSON. Are there any other appearances?

Mr. GOODE. J. M. Goode, appearing for the Public Utilities Commission of Arlington County.

Commr. PATTERSON. Are there any other appearances?

(No response.)

Are there any preliminary statements that any of the parties appearing care to make before we proceed with the witnesses?

Mr. KETNER. Mr. Commissioner, I would like to make a motion, perhaps two motions, on the question of jurisdiction and procedure, and if this is considered an appropriate time for those motions, I would be glad to do so at this time.

Commr. PATTERSON. You may make the motion.

Mr. KETNER. First I would like to request that the letter written by the Secretary of War to the Chairman of the Interstate Commerce Commission—I don't know what date that letter is, but it is in the docket and I am sure that the record will show—which is the basis of this investigation, be made a part of the record in this case.

Mr. GRANT. May I enter my appearance for the Arling-
7 ton Utilities Commission, Mr. Harry A. Grant?

Mr. KETNER. The date of that letter can be put in the record when we find out what the date is.

Will that letter be considered a part of the record in this case?

Commr. PATTERSON. If there is no objection, the letter will be put in the record and made a part of it.

Mr. KETNER. On occasions, I sit as a member of the Joint Board and having in mind that some of the matters here involved may become a Joint Board case, I want to here now disqualify myself to sit as a member of any Joint Board to hear any of the matters involved under consideration here.

On behalf of the State Corporation Commission of Virginia, I move you at this time that this investigation be discontinued because it is our position that the Commission does not have jurisdiction to investigate the matters here under consideration.

Pursuant to Section 203 (b) of the Interstate Commerce Act, Part II, the Commission instituted an investigation designated Ex Parte No. MC-7, Washington, D. C., Commercial Zone, for the purpose of determining and defining the zone adjacent to and commercially a part of the municipality of Washington, D. C., and any municipality or municipalities contiguous thereto. The
8 Commissioner's decision in this case is reported in 3 M. C. C. 242.

By its finding in this case, which appears at pages 246, 247 of its report, the Commission exempted certain points and areas in Maryland and Alexandria, Virginia, and Arlington County, Virginia, insofar as the Interstate Commerce Act, Part II, is concerned, respecting the issues involved in this investigation, that is, Docket No. 28991, and other matters.

It is our position that the subject matter here under consideration is not within this Commission's jurisdiction, certainly not until the Commission modifies its decision in the Washington, D. C., Commercial Zone case, 3 M. C. C. 243. However, the Commercial Zone case could not be modified in this investigation because that issue is not here involved.

The Capital Transit Company has full intrastate rights within the District of Columbia, but none in Virginia. It therefore may be argued that as to that company the Commission does have jurisdiction even in spite of its decision in the Washington, D. C., Commercial Zone case. However, the three so-called Virginia companies, that is, the Arlington & Fairfax Motor Transportation Company; the Alexandria, Barcroft & Washington Transit Company, and the Washington, Virginia & Maryland Coach Company, have limited intrastate rights throughout the entire
9 length of the routes here in question, and are therefore exempt.

Now, as to the Capital Transit Company, that line only operates a so-called "shuttle" service between the District and the Pentagon Building. It does not operate to any of the other points in Virginia involved in this proceeding. So it appears, therefore, that even as to the Capital Transit Company the Commission has no jurisdiction as to the other Virginia points involved, other than the Pentagon Building. As to the remaining three lines, respondents herein, the Commission is without jurisdiction to and from any of the points involved in this proceeding.

Obviously it could accomplish no good purpose for the Commission to proceed with investigation of the transportation of passengers by the Capital Transit Company between the District and the Pentagon Building only. The Commission being without jurisdiction as to the other three lines, it would be futile for it to

continue the investigation respecting only the limited operation of the Capital Transit Company, to which I have referred.

Now, I would like for Your Honor to rule on that.

Commr. PATTERSON. Do any other appearances care to discuss that motion?

Mr. HILL. I wish to join in so much of the motion as challenges the Commission's jurisdiction by reason of the terms of 203 (b) 8, and I wish to move further that so much of the proceeding as has to do with the fixing of through routes and joint fares between the Capital Transit and the Arlington & Fairfax be discontinued because of a lack of authority in the Commission under Section 216 to prescribe such through routes and joint fares.

Commr. PATTERSON. Is there any further discussion?

Mr. QUIRK. Well, Mr. Commissioner, I don't know whether you want any extended discussion of this question at this time or not. I dare say that you do not. I am not prepared to discuss it in any exhaustive sense but the Alexandria, Barcroft & Washington Transit Company, which I represent in this proceeding, believes that this Commission has jurisdiction.

In the first place, that carrier operates outside the zone that this Commission has fixed and in the next place it seems to me that the jurisdictional question can not be determined in any event until the Commission is informed as to just what sort of intrastate operation there is by these respondents within the District and within Virginia.

I don't mean by that to challenge the correctness of what Mr. Ketner has said. He perhaps may have the information all right, but in view of that part of the law, Section 203 (b) 8, which goes on to say that the transportation of passengers or property in interstate and foreign commerce wholly within a zone is excluded, provided that the transportation of passengers over routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with laws of each State having jurisdiction; that is, that the operator is engaged.

Now, as I see it, until this Commission knows exactly what the operation is within these respective States or Districts here, I don't see how you can determine that question, but the consideration that I have been able to give to the matter leads me to believe that this Commission has jurisdiction.

Mr. KETNER. May I say at this time, I first read Section 203 (b) 8, that is that language which says, from the point in the municipality zone, just as you did, but on further reading of that I don't think that that has anything to do with this matter here, and I don't think——

Commr. PATTERSON. (interposing). I don't care for a debate on this question. The motion and its amendment will be taken under advisement and we will proceed.

Is there any further preliminary statements?

Mr. KETNER. That motion will be taken under consideration, you say, Mr. Commissioner?

Commr. PATTERSON. Yes, sir.

12 Mr. KETNER. After we finish discussion on that motion I would like to make another motion, if I may.

Mr. PRETTYMAN. I would like on behalf of the Capital Transit Company to show that we concur in the views expressed by Mr. Quirk, that the Commission does have jurisdiction.

Mr. WHITTLESEY. The counsel for the Washington, Virginia & Maryland Coach Company joins with the counsel of the State Corporation Commission insofar as his remarks apply to the Washington, Virginia & Maryland Coach Company.

Commr. PATTERSON. You may proceed.

Mr. KETNER. Mr. Commissioner, I would now like to make a motion in the alternative.

In the alternative, and only in the event that the above motion, that is, on the jurisdictional question, is denied by the Commission, and without waiving any rights we may have respecting the jurisdictional question, we move you that the investigation here under consideration be referred to a properly constituted Joint Board for a hearing and recommendation pursuant to the provisions of Section 205 (a) of the Interstate Commerce Act, Part II.

This Section 205 (a) provides that the Commission shall when operations of motor carriers conducted, or proposed to be conducted, involve not more than three States, refer to a Joint

13 Board for appropriate proceedings thereon any of various matters referred to in Section 205, including "complaints as to rates, fares, and charges of motor carriers."

I know of no case that more readily lends itself to Joint Board decision than the matter here under investigation.

There are many reasons why this investigation should be handled as a Joint Board proceeding. I will not have the time to set forth all of those reasons, but I submit the following as some of the reasons why this should be a Joint Board case:

1. The rates of fare for District passengers going to and from the Pentagon and Navy Buildings in Virginia are made up of a combination of both interstate and intrastate operations. For example, many of the Capital Transit passengers are carried from the District to Rosslyn and thence to the Pentagon and Navy buildings in Virginia by the Arlington & Fairfax Motor Transportation Company.

The latter part of that operation would of course be entirely intrastate.

2. Assuming that the Commission would reduce the rate of fare from Washington to the Pentagon Building, such reduced fare for the interstate movement might well set up a discriminatory
14 situation against people traveling equal distances from Virginia points to the same destinations.

3. As I have previously pointed out, the Capital Transit Company has full intrastate rights in the District of Columbia but none in Virginia. The Virginia companies have limited intrastate rights in the District of Columbia, and full intrastate rights in Virginia. The intrastate transportation of passengers over all the carriers involved is decidedly the major factor having to do with the economic soundness of the operation of all the carriers.

Based on the information which has been furnished me, the estimated amount of revenue derived from the traffic here involved represents approximately 25 to 30 percent of the Arlington & Fairfax Motor Transportation Company's revenue, 10 to 12 percent of the Alexandria, Barcroft & Washington Transit Company's gross; less than 2 per cent for Capital Transit, and less than 1 percent of the revenue of the Washington, Virginia & Maryland Coach Company's revenue, whose permit is for rush hour periods, put in by authority of the Office of Defense Transportation during the winter of 1942–1943.

There is, of course, of necessity a close relation of the interstate and intrastate rates and operations of carriers such as here
15 involved. The major portion of the operation of these carriers' revenue and operation service is intrastate, and it seems to us that a Joint Board, whose members would or should be peculiarly familiar with local intrastate conditions, would be in a better position to deal with a matter of this kind than the Interstate Commerce Commission under the procedure it has initiated.

Again I repeat, that I know of no case that more nearly lends itself to a Joint Board procedure than the case which is here under consideration.

Now, the members of the Joint Board, they are peculiarly familiar with these intrastate operations and the Commission would immediately have the benefit of the knowledge of those local Board members, and it seems to me that this case particularly lends itself to Joint Board procedure, and also is the very kind of case that the Congress had in mind when it provided for Joint Board procedure.

Thank you.

Commr. PATTERSON. Does anybody care to be briefly heard on this motion before it is ruled on?

Col. BARRON. The War and Navy Departments are not interested in the second motion.

On the first motion, we would be glad to submit a few brief remarks, on the jurisdictional question, if you desire to hear them.

Commr. PATTERSON. You may proceed if you care to.

16 Col. BARRON. I am going to ask Captain Davis to discuss that very briefly.

Capt. DAVIS. If Your Honor please, Section 203 (b) of the Act does contain an exemption for certain local operations, but only in cases where such local operations are completely subject to regulation by both States concerned.

The carrier must be engaged in the instrastate transportation of passengers over the entire length of such interstate route in accordance with the laws of each State having jurisdiction.

Now, as I understand it, the Capital Transit Company does not operate any intrastate business in Virginia, and conversely the three Virginia companies operate no intrastate business within the District.

In fact, it is my understanding that at a proceeding last year, before the District Public Utilities Commission, the various respondents in this case there took the position that they were subject only to the jurisdiction of the Interstate Commerce Commission as to these operations.

Now, as I understand it, the case which had been cited involved trucking operations where there was a complete intrastate regulation of the routes on both sides of the State lines. Even if the exception did not apply, the Commission has, of course, jurisdiction where it finds it is in the national transportation in-

17 terests to do so; to take jurisdiction in a case like this, so we submit the Commission has jurisdiction and should exercise it.

It also might be called to the Commission's attention that the State regulation and the local regulation here has not been effective and can not be effective in view of the interstate character of these operations.

Mr. HILL. As to the Arlington & Fairfax, I think Captain Davis has his facts wrong. At the appropriate moment we will show the operations and the fact that they are under the authority of the two State bodies.

Mr. DAVIS. I did not understand that you conducted any intrastate operations within the District.

Commr. PATTERSON. Do any of the other appearances care to be heard with respect to the Joint Board operation; that is your last motion?

Mr. KETNER. Yes.

Commr. PATTERSON. That motion will be taken under advisement.

Are there any other preliminary statements?

(No response.)

Are the representatives of the War Department and the Navy Department ready to proceed?

Col. BARRON. We are ready, Your Honor.

We would like to, however, before we are required to proceed, first, for the purpose of the record, we would
18 like to have made a part of the record a letter from the War Department to the Commission dated August 12, 1943.

Commr. PATTERSON. Will you speak a little louder, please?

Col. BARRON. The letter to which I allude relates to the order of introducing evidence in which we objected to being put in the position of complainants.

Commr. PATTERSON. Your letter of August 12.

Col. BARRON. I want that letter made a part of the record, please.

Commr. PATTERSON. If there is no objection, the letter of Col. Barron to the Commission, dated August 12, with respect to procedure, will be made a part of the record.

Mr. HILL. I have never seen that letter.

Mr. KETNER. If I may, the letter that I asked be made a part of the record was a letter from Mr. Stimson to Chairman Alldredge of this Commission, dated April 27, 1943, and you have already ruled on that. I just want to get the date of the letter in the record.

Mr. HILL. On behalf of the Arlington & Fairfax, I have no objection to this letter being made a part of the record, provided, as contemplated by the Commission's rules of practice, we may be permitted to answer it.

19 Commr. PATTERSON. I answered the letter and I will read that into the record.

Mr. HILL. I think under the Commission's rules of practice, the War Department should have sent copies of this letter to the respondent since they were known parties to the proceeding. At least it is customary and we had no opportunity to examine this or to make any representations to the Commission.

Commr. PATTERSON. It is purely a procedural matter.

We will try and dispose of that, perhaps to the satisfaction of everyone.

Mr. HILL. With the understanding that we object to virtually everything said in this letter from A to Z, as to procedure, we have no particular objection to its going in the record. It is not evidence; it is purely argumentative.

Commr. PATTERSON. If there is no objection, the letter will be made a part of the record.

As the officer to whom this case has been assigned by the Commission, I replied to the letter as follows:

It is dated August 14th:

"Col. ELBERT M. BARRON,
Chief, Litigation Division,
Office of the Judge Advocate General,
War Department, Washington, D. C.

"DEAR COL. BARRON: I have your letter of August 12 relative to Docket No. 28991, Passenger Fares Between the District of Columbia and Nearby Virginia, in which you state that it is the position of the War Department that the respondent carriers should present their evidence first at the hearing on August 19th.

"Since this investigation was instituted at the request of the War Department, which alleged that the existing fares were excessive, it is in the nature of a complaint and accordingly it is believed proper that the Department should proceed first and introduce evidence that it may have tending to show the unreasonableness of the existing fares or their unlawfulness otherwise, to be followed by other parties who have evidence of a similar nature, and then by respondents. This order of presentation of the evidence will, I believe, expedite the hearing of this case."

It was signed by me. That has been approved by the entire Commission.

Col. BARRON. On August 17, 1943, I wrote a letter to the Chairman of the Commission on behalf of the War and Navy Departments, in response to the letter that you have just read, and I have given counsel a copy of that letter. If the Commission has already acted, of course, on the entire matter, why there would be no point in me including this additional letter in the record. However, if they have not——

Commr. PATTERSON. The Commission have acted upon your letter of August 17, in which they supported the Presiding Officer.

Col. BARRON. The two Departments, of course, for the purposes of the record, desire that their objection to the order of procedure be clearly shown.

Mr. KETNER. Mr. Commissioner, I think that the motion that I have made, it seems to me as a matter of orderly procedure, should be passed on by the Commission before we begin with the hearing or taking evidence in this proceeding.

Commr. PATTERSON. There is no disposition on the part of the Commission to delay the proceedings awaiting a ruling upon your

motion. However, if that is agreeable to all of the parties to the case, the hearing will be adjourned until the motions can be ruled upon.

Mr. KETNER. I think that that would be the thing to do, as a matter of fact, if it is going to be a Joint Board case I think that all of the evidence should be taken before the Joint Board members and then they can make their recommendation to the Commission.

Col. BARRON. The Secretaries of War and Navy, of course, have no comment to make on the procedure suggested,
22 other than that we do not like to delay the hearing unduly and would like very much, in as much as we have gone to the trouble of getting a great many witnesses from both Departments here this morning, we prefer naturally to go ahead as quickly as possible.

Mr. KETNER. It is not our purpose to delay the proceeding in any respect whatsoever. We did not know about this matter until recently and it just happened to come to our attention, and we are getting into the case as quickly as we can and we certainly don't want to delay.

Exam. MATTINGLY. A copy of this order was sent to the Virginia Commission just as soon as it was instituted. You know that, don't you?

Mr. KETNER. I think as quickly as we got that, Mr. Mattingly, our Chairman wrote a letter up here questioning the Commission's jurisdiction, and suggesting that it should be a Joint Board case.

Commr. PATTERSON. You maintained the same position from the beginning but you were timely notified.

Mr. KETNER. Yes; and we made our position timely known.

Commr. PATTERSON. There is no disposition on the part of the Commission to delay the proceedings. If the War Department is ready to proceed, you may call your witness.

Col. BARRON. The Departments would like to make an opening statement of the issues as they conceive them, and
23 of our position generally, and try to point the thing up to some extent by summation in a general way of the evidence we intend to introduce.

Opening statement by Col Barron

Col. BARRON. 1. This proceeding was instituted by this Commission on July 3, 1943, for the purpose of inquiring into the reasonableness of the rates for interstate transportation of passengers between the District of Columbia and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport.

The Commission made respondents the four carriers operating bus lines between these points and the District of Columbia. These carriers are:

The Capital Transit Company;

The Alexandria, Barcroft and Washington Transit Company;

The Arlington and Fairfax Motor Transportation Company; and

The Washington, Virginia & Maryland Coach Company.

I am appearing for the Secretary of War, and at the request of the Secretary of the Navy, for the Department of the Navy as well. Captain Paul S. Davis of my staff is also appearing for both Departments.

2. The War and Navy Departments are seriously concerned about the bus fares now in effect between the District and the installations named. Because of the expansion of personnel required in the prosecution of the war, these war agencies were unable to provide sufficient office space in buildings located within the District of Columbia on the north side of the Potomac.

3. There are now on duty at the Pentagon Building approximately 30,993 military and civilian personnel of the War Department. In addition, 3,370 military and civilian personnel and employees are stationed at Gravelly Point. At the Navy Arlington Annxed are stationed 7,145 naval and civilian personnel. At the National Airport there are a substantial number of civilian employees of the Department of Commerce and of private airlines as well as some military personnel.

4. The great majority of this personnel reside within the District of Columbia. While a substantial proportion use private transportation, most of them are dependent upon public transportation furnished by the four bus companies which are respondents in this proceeding.

5. The majority of those using the bus lines are civil-service employees in the lower salaried brackets. Approximately 55 percent of all War Department civilians received a base salary of $1,440 a year or less, and about 80 percent receive a base salary of not over $1,620 per year. The figures for Navy employees are similar. Probably the percentage of lower salaried employees using public transportation is even higher. Under the present bus fares such employees pay excessive amounts for transportation. We shall present evidence to show that the typical employee will have deductions for taxes, retirement benefits, and war bond purchases aggregating from 20 to 35 percent, so that each month the employee with base pay of $120 will receive about $112 in cash, after overtime pay.

6. It has been the experience of the Departments that the high transportation costs imposed on employees in these offices have a detrimental effect on morale and efficiency. Our testimony will show that the turn-over of employees at the Pentagon Building is approximately 36.8 percent higher than among similar employees at accessible locations within the District, such as the Munitions Building. Similarly, the turn-over rate at the Army Air Forces Annex at Gravelly Point is 107.1 percent higher than at accessible locations within the District. The experience of the Navy is similar. These turn-over figures are merely one indication of the adverse effect of these high fares on the morale and efficiency of war-service employees. In the opinion of the Departments, these high fares are detrimental to the effective prosecution of the war effort.

26 7. Fares from the installations of the Navy and War Departments to terminals within the District vary from five to ten cents.

The Capital Transit Company charges a fare of five cents from the Pentagon Building to 19th and C Streets N.W., or to 7th and Constitution. At the latter point the five cent fare is available only to passengers arriving or leaving by other Capital Transit lines.

The Alexandria, Barcroft and Washington Transit Company serves all of the installations, and charges ten cents from each of buildings to its terminal in the District at 12th Street and Pennsylvania Avenue, except that a $1.95 book of tickets at 7½ cents per ride is available to the Army Air Forces Annex and a five cent fare is available from the Lincoln Memorial to the Navy Arlington Annex.

The Arlington and Fairfax Motor Transportation Company maintains a shuttle service from the Pentagon and the Navy Annex to Rosslyn, Virginia, for which five cents is charged. It charges ten cents from the Pentagon or the Navy Annex to 12th and Pennsylvania.

The Washington, Virginia & Maryland Coach Company serves the Pentagon at a fare of ten cents to 11th and E Streets.

27 For employees not living close to these terminals within the District, it is necessary to pay two fares, or a total varying up to twenty cents per ride in order to go between home and work. This amounts to about $10 per month. Such a cost for transportation is entirely disproportionate to the incomes of the lower-paid employees.

8. It is apparent that the operations of the companies themselves have been increasingly profitable. The number of passengers carried has increased continually, and because of war necessities the companies have been unable to furnish a propor-

tionate increase in buses. Accordingly, there have been large increases in the revenues of all the companies concerned, and in their respective net incomes before and after taxes.

9. Detailed evidence will be presented concerning the present revenues and expenses of the companies concerned. It will be shown that the rates of return for the year 1942 of the companies involved, before special war taxes, were as follows:

	Percent
Capital Transit Company	13.0
Alexandria, Barcroft and Washington Transit Company	96.6
Washington, Virginia and Maryland Coach Company	37.4
Arlington and Fairfax Motor Transportation Company	31.4

28 Even after all taxes, which, in our opinion, should not under present day conditions be passed on to the consumers, the rates of return of these companies ranged from 8.6 percent to 31.1 percent.

10. It is the position of the two Departments that these rates of return are wholly unreasonable, and it is urged that this Commission take prompt action to establish reasonable rates.

11. It is the position of the Departments that these four installations should for fare purposes be considered exactly the same as are other installations which are located wholly within the District of Columbia. As a matter of fact, part of the Pentagon Building and part of Gravelly Point are within the probable legal boundaries of the District.

The length of the average ride of employees going from their homes to the Pentagon Building and to the Army Air Forces Annex is approximately 6.2 miles. Regardless of where the legal boundary of the District of Columbia may be situated, however, these installations should, for all practical purposes, be treated for rate-making purposes as part of the District of Columbia. They are all located within much closer proximity to the central part of the city than are many other military and naval installations and office buildings located upon the north side of the Potomac
29 which may be reached by the payment of a District fare.

Maps and tabulations will be presented showing clearly that these points are, from the standpoint of distances from the business and residential areas, such that they should be treated exactly like other points within the District for rate-making purposes.

12. Figures have been prepared showing estimated reductions in revenues to the companies if the four installations are given the benefit of the District fares. In making calculations on the effect of fare reductions it has been assumed that where transfers are made from a Virginia bus line to the Capital Transit Company, a fair division of both rates will be made. If the companies cannot

agree upon such a division, it should be fixed by this Commission on the basis of the evidence.

13. On the basis of the evidence which will be introduced concerning the number of passengers carried between the installations concerned, and assuming a division of joint fares based on approximate mileage, we have estimated that the total reduction for all the companies resulting from the application of the District fare would amount to $705,000 in gross revenues. Because of present taxes, the total reduction in net income is only $136,000. These amounts are divided as follows between the companies concerned:

	Gross	Net
Capital Transit Company	$443,000	$84,000
Alexandria, Barcroft and Washington Transit Company	203,000	38,000
Washington, Virginia & Maryland Coach Company	6,000	1,000
Arlington and Fairfax Motor Transportation Company	55,000	13,000

After making such adjustments in fares all the companies would still earn more than a fair return.

14. Accordingly, it is respectfully submitted that the Commission, after hearing the evidence in this case, should enter an order setting aside all present fares between the District of Columbia and the four installations concerned. The order should require that service be given between the District of Columbia and these installations at the same rate as between points within the District. The order should require the respondents to establish fair joint rates, and unless the respondents agree upon such provisions, the division should be fixed by the Commission as contemplated by Section 216 (f) of the Interstate Commerce Act.

15. In the opinion of the Secretaries of War and Navy the present high cost of transportation is detrimental to the war effort. This Commission should in this proceeding take proper corrective action to reduce these costs.

I would like to call as our first witness Major General John T. Lewis, Commander of the Military District of Washington.

Mr. QUIRK. Mr. Commissioner, as I understand it, the question of divisions are not under consideration in this particular proceeding, under this order of investigation; am I correct in that?

Commr. PATTERSON. That is correct.

Mr. QUIRK. Well, Col. Barron, I may not have understood him, but I got the impresssion that he urged that if the parties could not agree on the division of any rate that this Commission might fix, if it fixes a rate, that then the Commission on the evidence here should proceed to prescribe the division.

Col. BARRON. The Commission's inquiry into lawful, local, and joint fares.

Commr. PATTERSON. But not with respect to the division of the fares; that would have to come in another proceeding.

Col. BARRON. It is possible that that would, but I think that we will have to discuss it in this proceeding.

Col. PATTERSON. It may have to be eventually determined.

32 Major General JOHN T. LEWIS was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Will you please state your name, title and position in the War Department?

A. John T. Lewis, Commanding General of the Military District of Washington.

Q. You are a Major General of the Army?

A. That is correct.

Q. Will you please state your duties and functions with reference to the transportation matters within the Military District of Washington?

A. In addition to other duties, as Commanding General of the Military District of Washington, I am charged with the responsibility of seeing that adequate transportation at reasonable rates of fare is provided for personnel of the War Department employed in my area.

Q. Please state the general position of the War Department in this proceeding?

A. The War Department is primarily concerned with the successful prosecution of the present war and any matter which affects its efficient prosecution of the war effort. Hence it must necessarily be interested in obtaining and keeping efficient personnel on duty at the various establishments.

35 The War Department is interested in this matter because adequate and economical transportation of its employees has a direct bearing on the personnel turn-over of the War Department employees, their morale, their efficiency, and their productive effort.

As long as practically all of its local employees were located within the political boundaries of the District of Columbia, there was no question of discriminatory or unreasonable rates of fare. However, the expansion of the War Department functions during 1942 made necessary the utilization of office space in nearby Virginia for essential military and civilian personnel. This caused a shifting of personnel to Virginia who had previously worked in the District of Columbia and placed on them the burden of additional costs for transportation between their offices and residences, in some instances more than doubling the previous cost of transportation.

These additional costs, borne principally by people in lower salary brackets, rapidly developed into a major factor in personnel turn-over at the Pentagon, and at Temporary Building T-7, located at Gravelly Point.

Numerous complaints were received, both as to adequacy of service, and as to the cost of the service provided.

In the matter of costs of transportation, the inequities in
33-a the present fares structure are well known, and the opinion of the War Department is that these fares are excessive.

Interested agencies have been trying for a period of more than a year to bring about the establishment of what they regard as reasonable rates of fare between the District of Columbia and the military establishments located in adjacent Virginia, but have not met with success. On July 30, 1943, the transit companies came forward with a voluntary proposal for a slight reduction in fares but the proposal was not acceptable to the War Department.

It is the opinion of the Secretary of War that the present fares are discriminatory, unreasonably high and a detriment to the war effort.

Further the Secretary of War believes that for fare purposes the Pentagon, Gravelly Point, and National Airport, as well as the Navy Arlington Annex should be considered as being within the District of Columbia.

Col. BARRON. This witness' testimony was introduced for the limited purpose of stating succinctly the War Department's position, and I have no other questions.

Commr. PATTERSON. You may cross-examine.

Cross-examination by Mr. PRETTYMAN:

Q. How long have you been in command of the Washington District?

A. Since May of last year.

34. Q. May of 1942?

A. Yes, sir.

Q. You made a statement that the companies made a voluntary suggestion in regard to these fares.

Was it or was it not a fact, as far as you know, that the suggestion was the result of official action on the part of some several agencies that had been in consultation with the companies?

In other words, so far as you know, was that a voluntary offer on the part of the companies just coming forward and making that offer?

A. I am afraid my information would be second-hand on that, because I could only testify as to what my staff officers reported to me. I am afraid someone directly connected with that would have to answer.

Col. BARRON. The officers who conducted the negotiations would be in a better position to testify.

Mr. PRETTYMAN. I would like to make a motion that the testimony of this witness be stricken on the ground it is obviously second-hand and he speaks as to what the Secretary of War thinks and the opinions of the Secretary of War, and in other respects that is entirely second-hand.

Commr. PATTERSON. The motion is overruled, but you may cross-examine him.

35 Cross-examination by Mr. QUIRK:

Q. Are you familiar with the negotiations that have been going on for sometime between these respondent bus companies and the Regional Committee?

A. As the officer responsible for the efficient transportation, I have, yes, sir; as Commander, I have been in meetings, and I have received reports from my staff officers.

Q. Don't you know, then, that the committee, the Regional Committee, and some representatives of the War Department, did make a suggestion to these bus people sometime ago and that on March 9, 1943, the bus companies acquiesced in that suggestion, to establish certain fares between the District and Virginia points involved?

Col. BARRON. Objection. I don't see the purpose of evidence concerning activities of a Regional Committee. I just don't see what he is leading up to here.

Mr. QUIRK. If I may answer that, Mr. Commissioner, the witness here has gone over the very question that I am quizzing him on.

Commr. PATTERSON. He testified on that question; he has undertaken to seek the knowledge that he has of what he testified to.

Col. BARRON. He has not testified as to the activities of the
36 Regional Committee. That is something that is new to me.

Mr. HILL. On the basis of the objection by Col. Barron, I would like to renew and join in Mr. Prettyman's motion, that all of this testimony be stricken. Obviously it is without the knowledge of the witness.

Commr. PATTERSON. The witness may answer the question.

The WITNESS. May I have the question repeated?

(Question read.)

The WITNESS. I am familiar with the attempt by the Regional Committee to get the bus companies together.

By Mr. QUIRK:

Q. The point I am getting at is that this committee which seems to have been representing the people et al., interested, made a suggestion to the bus companies and after some consideration, and with some reluctance, the bus companies acquiesced in that sug-

gestion, and I am simply trying to find out if you are familiar with that. Don't you know that that happened?

A. I know that the Regional Committee tried to get the bus companies together, at the request and efforts of the District Committee.

Q. Don't you know that the committee actually suggested a certain fare as a compromise and that the bus companies acquiesced in that?

A. Well, I know of the proposal submitted by the bus companies to the War Department and Navy Department for ac-
37 ceptance on approximately July of this year.

Q. But apparently you don't know about the suggestion made by this Regional Committee, that a certain fare be established, and that the bus companies with some reluctance and some qualifications as to not admitting the reasonableness of it, and in order to settle the matter, did acquiesce in it. Do you know about that particular transaction?

A. Well, my information, of course, is secondary. I do know of the proposals submitted by the bus companies on this particular date for the acceptance of the Navy and War Department, and I know that of my own knowledge, and these transactions that have taken place between the Regional Committees and the bus companies in these various meetings with my representatives, of course I am not personally familiar with that, except as reports that I have received and it is secondary.

Commr. PATTERSON. Will you have a witness to testify on that?

Col. BARRON. Yes; we have witnesses to bring all of this, because it is utterly pointless: he knows the position of the War Department and that is all that we have introduced.

Mr. QUIRK. The only reason I am asking these questions is that General Lewis said that an effort had been made over a long
38 period of time to obtain an adjustment and I am simply bringing out the incidents that occurred in the past year in an effort to settle this matter. He apparently is not too familiar with them.

By Mr. QUIRK:

Q. Do you know that this general question was finally submitted to W. Y. Blanning, Director of the Bureau of Motor Carriers of the Interstate Commerce Commission?

A. I do.

Q. Are you familiar with what he did?

A. I am.

Q. Are his recommendations satisfactory to the War Department?

A. No.

Q. Well, now, didn't his recommendation happen to square with this compromise that the bus companies and the Regional Committee tried to agree on or do you know?

Col. BARRON. He is asking for opinions and conclusions.

Commr. PATTERSON. I think that we will have a witness on that.

Col. BARRON. The witness testified that he is familiar with the War Department's activities and the negotiations generally, and he is not supposed to know what every committee in the field has done or has not done.

Mr. QUIRK. All right.

39 Mr. PRETTYMAN. Could I ask another question on cross? I have had my turn.

Commr. PATTERSON. Go ahead; ask another question if you have one.

Cross-examination by Mr. PRETTYMAN:

Q. General, are you familiar with a letter written by the Capital Transit Company to Brigadier General B. B. Somervell, Chief of the Construction Division of the Quartermaster Corps, U. S. Army, on the date of August 26, 1941, advising General Somervell that if the War Department put the new building at the site where they meant, an additional 5 cent fare for the journey would be necessary?

A. I am not familiar with it. I have never seen it.

Commr. PATTERSON. If there is no more cross-examination——

Mr. WHITTLESEY. May I see the paper that you referred to?

The WITNESS. It is just the testimony. There is nothing else.

Mr. WHITTLESEY. You obviously used it to refresh your memory. May I see it?

The WITNESS. I have nothing to hide.

Col. BARRON. Let him have it.

(A document was passed to Mr. Whittlesey.)

40 Cross-examination by Mr. WHITTLESEY:

Q. Do you know as a matter of fact that some of your subordinates on your staff appeared some months ago before the Arlington County Utilities Commission, and at that time agreed that the Virginia rates to the building were fair and reasonable?

A. I know that there have been several meetings. I don't know what they agreed to.

Commr. PATTERSON. That has nothing to do with this case. We are not investigating rates in Virginia.

By Mr. WHITTLESEY:

Q. Well, General, do you know whether it is the low-salaried employees that use the busses, of your own knowledge?

Col. BARRON. That has not been opened up on direct examination of the witness and that will be offered by an expert witness.

Commr. PATTERSON. That is not involved here.

Mr. WHITTLESEY. Well, then, I join with the counsel of the Capital Transit Company and the Arlington & Fairfax. Obviously this witness is unaware of the facts that he has stated and it is hearsay and comment by counsel would portray the War Department's position adequately.

Col BARRON. I would like to state this; that there is no objection to the General answering the last question if he
41 knows. Of course the figures have been prepared under his supervision, regarding these matters, and there are better witnesses to testify, those who prepared the exhibits, and he knows generally what they reflect.

He speaks directly for the Secretary of War, as the Commander of the Military District. The Army chain of command is well known to your Honor.

Commr. PATTERSON. Yes. The question is not important, either one way or the other.

Cross-examination by Mr. HILL:

Q. General, do you know whether it is a fact or not that the basis on which the bus companies acquiesced in meeting with the Regional Committee, was considerably lower than the basis first suggested in the meetings with the Regional Committee?

A. I am afraid that I can't answer a question of this type because there were so many meetings, and your question is so general and involved I could not possibly answer it.

Commr. PATTERSON. The War Department, I assume, will have other witnesses to testify to these facts.

Mr. HILL. The General has made some very, very broad statements.

Commr. PATTERSON. He has said it is opinion evidence; he has said that that is his opinion.

Mr. HILL. He must base his opinion on some facts.

42 Col. BARRON. All of the evidence adduced, or most of it, was prepared under his supervision. There are other witnesses to go into these detail things, and as far as our statement of policy is concerned, he is best in a position to make it because he is more intimately acquainted with the policy questions involved here, and the negotiations between the Secretary and other people.

Mr. HILL. I will pass that, Mr. Commissioner, and go to the next question.

By Mr. HILL:

Q. Do you know what the last basis was that was acquiesed in by the bus companies?

A. I can get a copy of your report; yes.

Q. Do you know as you sit on the witness stand?

A. Yes, sir; but not in detail. I will have to get that. That will be introduced in evidence, and I can get it and enter it. I know in general what it was, a slight reduction, and it was reported unsatisfactory by the Secretary of War and by the Navy Department.

Q. I understood you to testify that it is your opinion that the present basis of fares is impeding the war effort. Will you tell us specifically in what categories this impeding falls? Just how, now, is that done?

A. The principal way is that the civilian personnel are dissatisfied with the high rate of fare and the adequacy of the transportation, the crowded busses, the tremendous cost that they have to pay to go just across the river and an additional few miles.

43 It comes to my attention by numerous reports and complaints daily.

I get it first-hand from the individuals, the people who are working in the War Department, and we get also an indication of it by the higher turn-over of personnel in those buildings.

Q. Is it your opinion, General, that the condition of crowded busses will be ameliorated by decreasing the income of the bus companies?

A. No; but the reduction of fare will tend to offset that, but if an individual has to pay approximately 43 percent of his transportation costs across the river and go another few miles, they have a justifiable complaint.

Q. Is it your opinion that they will patronize the bus companies less, so that there will be less crowding, if the fares should be reduced?

A. They can only haul as many as you can accommodate. The number hauled would depend entirely upon the amount of transportation.

Q. You don't think the reduction of the fares here will result in less passengers using public transportation, do you?

A. No; I think that it will increase up to the maximum that you can carry.

Q. Can we not assume that that impeding of the war

44 effort will be worse, that there will be more passengers and greater crowding?

A. It is a matter of opinion.

Q. Well, you are an opinion witness on the stand, and now what is your opinion on that?

The WITNESS. I beg your pardon?

Col. BARRON. The General does have the facts, and I want to ask that counsel be instructed to quit making those remarks. I don't like that and it is not proper.

Mr. HILL. Every time we ask the General for any information, his counsel objects.

Col. BARRON. He has given his opinon.

Mr. HILL. I would like to have his opinion. I have not heard what his opinion is on that.

Will it or will it not result in greater or less use of the busses to and from these four points?

Col. BARRON. He has expressed his opinion that it would, in the record.

Mr. HILL. Would what?

Col. BARRON. Cause greater bus traffic.

Commr. PATTERSON. He said it probably would increase the traffic.

By Mr. HILL:

Q. Now, these expressions of dissatisfaction which you have received, General, have you made any analysis to determine
45 in what major respects your employees have become so dissatisfied that they have severed their connection with those who employed them at these four points?

Col BARRON. That question can better be answered by other witnesses. We have exhibits, and all kinds of witnesses to show that, and to show the turn-over.

Mr. HILL. I would like to observe that this is rather an amazing state of affairs. The witness is put on the stand, and the moment that you ask him for a fact, we have an objection, and now if it may be understood that the General is on here simply to say that the War Department would like to have the rates reduced, to the bone, if you please, then we will ask him no more questions.

If it is understood that he has any basis for any of the statements of fact, I submit that we are entitled to find out what the basis is. Otherwise he should be withdrawn from the stand and his testimony stricken.

Col. BARRON. I think that it is elementary that a Commanding General may state generally what is going to be proved up by his subordinates and he can testify regarding facts that he knows, things done under his immediate supervision, and that he has seen the reports are made to him of every conference. Of course he can't remember all of them because there have been hundreds of them over the years, and to ask him to go into the detail of all of this stuff is perfectly ridiculous.

46 Commr. PATTERSON. There will be corroborative evidence.

Mr. HILL. I have heard a lot of things about the war, but I would not attempt to express an expert opinion on it.

Commr. PATTERSON. Are there any other questions?

By Mr. HILL:

Q. I would like to ask the General if he knows anything about whether an analysis had been made of the major causes for the employees who have severed their connections with those who employ them at these four points?

A. Yes; I do know the record.

Q. Now, do you know what proportion of the dissatisfaction lies in transportation, under that analysis?

A. No; I cannot, unless I were permitted to check the record and total it.

Q. Do you know how many major causes are given by the employees for severing their connections there?

A. At the present time, the transportation is the major complaint, by far.

Q. Does your analysis——

A. By my personal information of the complaints that I have, from my personal knowledge in talking to the individuals.

Q. Now, you are talking about one thing and I am talking about another. I understood you to say an analysis has been made.

A. I cannot testify as to the results of that unless I check it personally, but I can testify as to the complaints
47 that have been registered to me personally, and which have caused me to get after this problem and try and settle it.

Q. It is your personal opinion regardless of any analysis that transportation is the major cause?

A. In my personal opinion, and the information that I have received, at the present time it is the major cause of separation, is due to discontent, unsatisfactory conditions.

Q. Do not the complaints made by the employees ordinarily come to an officer of lower rank than you, General?

A. That is correct.

Q. Who brings the complaints to you personally, then?

A. The complaints that I am talking about are the ones that I personally get, because I move through the Pentagon Building daily, and I have made it a point to discuss these problems as well as other problems in connection with the operation of the Pentagon.

Q. Those with whom you have talked on the subject constitute the vast minority, would they not?

A. That is true.

Q. You have some 31,000 employees and officers there.

A. That is true; it is a very small minority.

Q. But you can't tell us what the actual analysis would show; you have no knowledge of that?

A. You would have to check the record.

48 Col. BARRON. We have that by Col. Isbell and the officers under his supervision, there has been a questionnaire sent to all of them; the information has been taken from them and compiled in exhibits and they will be introduced at the proper time.

Obviously this type of witness is not expected to testify to things of this sort.

Mr. HILL. I wonder what he is expected to testify. All he had to do was say, yes, he knew, or did not know.

Commr. PATTERSON. We are not getting anywhere; we are not getting information, for the purpose of developing information, and this evidence will be submited by someone else.

Mr. HILL. So far it may be described as nay, nay, a thousand times nay.

Col. BARRON. I object to that. That is improper.

Mr. HILL. That is all.

Col. BARRON. I want to move that counsel be required to treat our witnesses with respect.

Commr. PATTERSON. You may proceed with the cross-examination.

Mr. HILL. Mr. Commissioner, to explain my position, it has become not testimony but a second statement of position by the War Department, and first we had it by counsel.

49 Commr. PATTERSON. We have enough of this, and we don't need any more cross-examination of this kind. It is not producing any facts.

Mr. HILL. I agree with you there; I am 100 percent in agreement.

(Witness excused.)

Commr. PATTERSON. You may call your next witness.

Col. BARRON. Commander Randolph of the Navy is the next witness.

Lt. Commander R. F. RANDOLPH was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Please state your name, rank, and position in the Navy Department, sir.

A. R. F. Randolph, Lieutenant Commander, U. S. Naval Reserve, Executive Officer, Transportation Branch, Office of the Assistant Secretary of the Navy.

Q. Will you please state the position of the Navy Department, with the subject matter of this proceeding?

A. Certain offices of the Navy——

Mr. PRETTYMAN. Could we inquire as to whether this witness is going to merely state the position of the Navy Department, or

is he going to testify as to facts and it seems to me that we can save a great deal of time, if he is merely going to state the position of the Navy Department, we object at this time on the
50 ground that it is not evidence and counsel can state the position of the Navy Department.

It seems to me that we are just wasting time, if he has any facts, all right, and if he is just going to state a position there is no reason why a witness should be put on the stand to testify.

Col. BARRON. There are several general aspects of the position of the Navy Department that should be covered by this particular witness and he is familiar in a general way with the complaints the Navy has received, and it joins generally with the War Department in its complaint here, and he is familiar with the general picture, and he is not familiar with the detail data; he is the same type of witness on the part of the Navy that we have offered just now for the Army, and I thought that the Commission would be interested in having someone on that position.

Commr. PATTERSON. I think the witness should be permitted to state what he knows about this matter.

The WITNESS. Certain offices of the Navy and Marine Corps are located in a building known as the Arlington Annex. This building is south of the Potomac River. The personnel employed in the Arlington Annex is compensated at the same rates of pay as the personnel occupying similar positions, in the other offices of the Navy Department located within the District of Columbia.
51 It is the belief of the Navy Department, that this turnover is due to transportation. It is the further belief of the Navy Department that the Arlington Annex is in fact simply a part of the Navy Department, and as such should be treated for rates of fare of its employees on the same basis as buildings within the District.

It is the further belief of the Navy Department that the imposition of the existing fares is in effect a discrimination against those employees who have no choice as to where they have to work but whose places of employment are dictated by the needs of the war effort.

Col. BARRON. That is the only statement that we desire to make, so far as the general position of the Navy is concerned. We have other witnesses to introduce their data.

Commr. PATTERSON. You may cross-examine.

Cross-examination by Mr. PRETTYMAN:

Q. What is the rate of turn-over of employees at the buildings to which you refer?

A. I think other witnesses will answer that. I am not prepared to answer that question.

Col. BARRON. We are prepared to offer a witness on that.

By Mr. PRETTYMAN:

Q. In other words, your flat statement that the rate of
52 turn-over was greater at the buildings to which you refer than it was at the other Departments of Washington was not based on any facts, according to your knowledge.

A. That is based on the exhibits which will be introduced by subsequent witnesses.

Q. You have no personal knowledge of the facts?

A. I have not.

Redirect examination by Col. BARRON:

Q. You know in a general way, of course.

A. I know what studies have been made, and that those are the conclusions of the studies.

Commr. PATTERSON. If there is no further cross-examination, you are excused.

(Witness excused.)

JAMES A. RYDER sworn as a witness and testified as follows.

Direct examination by Capt. DAVIS:

Q. State your name.

A. James A. Ryder.

Q. Position?

A. Engineer, with the National Capital Park and Planning Commission.

Q. Generally speaking, Mr. Ryder, what are your duties?

A. Well, general engineering in connection with planning in the Washington vicinity.

53 Q. Mr. Ryder, I show you here a document which I will ask to have marked as War Department Exhibit No. 1, and I will ask you to state what that is.

(Map marked "War Department Exhibit 1, Witness Ryder," for identification.)

A. I will identify this as a map prepared in the office of the Park and Planning Commission, showing land owned by the United States of America on the Virginia side of the Potomac River, in relation to the high-water mark of 1791.

Mr. HILL. Mr. Commissioner, do you have more maps on that, Captain Davis?

Capt. DAVIS. We have a limited number.

The WITNESS. I have one more.

By Capt. DAVIS:

Q. Mr. Ryder, was this map prepared under your supervision?

A. It was partly prepared under my jurisdiction, but particularly the lines shown on the map indicated as the 1791 shore line,

and it was plotted under my direction from data of surveys which were made several years ago, to determine the high-water mark on the Virginia shore.

This line has been called the boundary between the District of Columbia and Virginia, and that was the reason for its appearance on the map.

It is called the boundary line by reason of decisions handed down by the Supreme Court of the United States.

54 Q. Now, Mr. Ryder, this line was drawn in accordance with the survey made pursuant to the direction of the Boundary Commission, was it not?

A. It was made for submission to the Boundary Commission; yes, sir.

Q. And that line is this dotted line.

A. The heavy dash line which appears on the map along close to the shore of the Potomac River on the south side.

Capt. DAVIS. If the Commissioner please, I would like to ask that this exhibit be admitted in evidence as War Department Exhibit No. 1.

Commr. PATTERSON. If there is no objection, it will be received and identified as War Department Exhibit No. 1.

(Map, marked "War-Navy—Exhibit 1, Witness Ryder" received in evidence.)

Mr. PRETTYMAN. I would like to reserve the right to move to strike after cross-examination of this particular exhibit. I mean this opens up a very old and indefinite question as to the boundary line of the District, and by not objecting at this time I don't want it to be understood that I am admitting the accuracy of the map.

Mr. HILL. We join in that.

May it simply be identified as Exhibit 1 for the moment?

Capt. DAVIS. We would like to have it in the record. Of

55 course other parties can offer other evidence. We think that this is helpful to the Commission's consideration of the case.

Mr. QUIRK. Is it the intention to bring up the question of the boundary line as an issue in this case?

Capt. DAVIS. As I understand it, if the Commissioner please, this map does show the best opinion of government experts who have studied this matter as to where the boundary line is and we believe it should be in the record for the Commission's consideration.

Commr. PATTERSON. It is their opinion of where it ought to be.

Mr. QUIRK. What position are you taking on it?

Capt. DAVIS. Certain jurisdictional questions were raised in this proceeding and we believe it is appropriate to have some evidence in here of where the boundary is.

Col. BARRON. And where the installations are.

Mr. KETNER. Are you asking the Interstate Commerce Commission to undertake to determine the boundary line between the District and Virginia? If so, we want to certainly know about that, Mr. Commissioner.

Capt. DAVIS. I assume the Commission will pass upon its jurisdiction here and would like to have whatever facts are available to us which may have a bearing on that, and that is the only reason we brought it in.

Mr. KETNER. I understand that you are offering this
56 map with that in view, that the commission might follow your line of evidence, that the boundary line is as suggested by the map.

Capt. DAVIS. To the extent the jurisdictional question has been raised there should be some evidence of where the boundary line is, and that is the purpose of this offer.

Mr. PRETTYMAN. Then the boundary line is put into issue by the War Department right here by this exhibit, if I understand Captain Davis' position.

Col BARRON. We are just trying to give the Commission all of the facts that we can get and we think it might be of interest to it.

Mr. PRETTYMAN. This witness testified flatly, as I understand it, that that was the District Line, in his opinion.

The WITNESS. No; I said it had been called the boundary line by reason of decisions handed down by the Supreme Court of the United States. I am not making any contention as to it being the boundary line.

Mr. PRETTYMAN. It is not your testimon' that this is the boundary line?

The WITNESS. I am not qualified to testify that it is the boundary line. It was put on the map for the purpose of showing where the high-water mark of 1791 had existed.

Capt. DAVIS. I will bring that out in a little more
57 detail.

By Capt. DAVIS:

Q. This map was prepared, was it not, on the base of another elaborate survey map furnished to you by the National Park Service?

A. It was surveyed, and it was based on coordinates established for the Washington region, its geographical position is established by the system of coordinates that has been adopted for this region, and it was surveyed and determined by representatives of the Department of Justice, the National Capital Park and Plan-

ning Commission, and the Department of Interior, and this line was plotted from the data of that survey.

Q. And you know, do you not, that that survey attempted to reflect the high-water mark as of 1791?

A. I do.

Q. While you did not make the survey yourself, you know that that was the purpose and the effect of it?

A. I know that; yes, sir.

Q. And this map was made under your supervision, to show in convenient form the results of that survey; without going into all of the details of the surveying and engineering monuments?

A. It was done particularly to show its relation to existing physical features, and the original survey, of course, did not at-
58 tempt to locate all of the physical features on that side of the river.

Capt. DAVIS. If the Commissioner please, we can have, if the Commission desires, the witness who can testify as to the details of that survey; we believe, though, that for the purpose of this proceeding this map, on the basis of the testimony of Mr. Ryder, should be sufficient.

Mr. QUIRK. Well, Mr. Commissioner, I think that this map, if it is introduced for the purpose of having this Commission pass on a boundary line, is objectionable, incompetent, and irrelevant and immaterial, but either the War Department is going to agree with the Virginia Corporation Commission on the jurisdictional question, or else they are going to argue that this line cuts through the Pentagon Building, some of the business is in the District of Columbia, and ought to be so treated, and so forth.

Now, one of the other things, it could only have a relevancy on those two points, as I see it, and if the boundary line is to be a serious question in this case, then it ought to be gone into by competent evidence.

I object to it on that ground.

Mr. KETNER. I certainly support Mr. Quirk's objection in that respect. If the boundary line is going to be made an issue here, we ought to know about it in Virginia. That is a matter of importance the authorities down there have been handling for some time.

59 Mr. HILL. We too join in the objection and I would like to inquire whether it is the view of the War Department here that the Commission has no jurisdiction as to the eastern slice off the Pentagon there, drawn by the high-water mark of 1791?

Commr. PATTERSON. The Commission has instituted this investigation on the theory that this transportation is interstate, and of course if it is not interstate, if it is wholly within the District of Columbia, why the Commission would be without jurisdiction.

Col. BARRON. Obviously.

Exam. MATTINGLY. That being so, it does not make any difference where the boundary line is, if that point is on one side or the other point is on another side of that line.

Capt. DAVIS. That of course is true so far as the jurisdiction is concerned, and Col. Barron stated our position, that the War Department believes the Commission has jurisdiction. However, it may be pertinent in considering the reasonableness of the fare structure to know that the boundary practically runs right through the Pentagon, and through most of the installations at Gravelly Point, so we believe it is appropriate to have it in the record.

Mr. PRETTYMAN. If Your Honor please, I think that we ought to have it clearly understood whether the War Department offers this map as showing the boundary line of the
60 District of Columbia, because as counsel has just indicated, they are going to base their case on the boundary being here, where it is indicated on this map, running halfway through the Pentagon Building; if that is so, we ought to know it right now so that we have got to know whether we are going to try the boundary line, and if they don't make that contention we ought to know it now.

This witness said that he did not present the exhibit for the purpose of showing the boundary of the District of Columbia.

That is where we stand.

Col. BARRON. He said he can't testify as to where it is of his own knowledge.

The WITNESS. I am only identifying the map, as having been prepared under my direction.

Mr. QUIRK. It was taken from another map, wasn't it? You had nothing to do with that.

The WITNESS. Not directly.

Commr. PATTERSON. To the extent that these fares are wholly within the District of Columbia, this Commission would be without jurisdiction. Now, if the contention by the War Department or anybody else is that these fares are wholly within the District of Columbia, obviously the Commission would be without jurisdiction so far——

61 Col. BARRON. We don't contend that, of course, we think it is necessary in order to show where the geographical situation in reference to transportation and the area involved which we are going to constantly discuss here. We have a number of maps that we would like to show where our installations are and the distances and things of that sort. I think that that is just elementary common sense to put that kind of evidence in. The Commission is going to need it when it goes to considering the physical lay-out and the physical situation.

Mr. PRETTYMAN. If Your Honor please, the distances are all right, we are not discussing that.

This map may be perfectly accurate as to distances and locations, but it is one thing in this case if they contend that the Pentagon Building is partly within the District of Columbia, a totally different thing if they are not contending that, and don't submit it for this purpose.

Col. BARRON. We didn't say that.

Mr. PRETTYMAN. Your exhibit shows the Pentagon Building partly within the District of Columbia, and it makes a lot of difference to the Capital Transit Company and the fares and service and Heaven knows what is all, if your contention is that that is within the District of Columbia.

Col. BARRON. We think in an investigation proceeding that the Commission is entitled to all of the information
62 that it can get on questions of this kind. We don't know where the District boundary line is and we don't pretend to, but we do know where the best witnesses are, we think we do, as to where the District Line is. We are making no contention as to where the high-water mark is, or as to where the line is but we do have, I think it is competent evidence on that subject, if the Commission wants it, it will be produced at the present time.

Mr. PRETTYMAN. I don't know whether it is proper but I would like to ask counsel just the flat question:

Does the War Department contend that the boundary line of the District of Columbia is in accordance with this exhibit?

Col. BARRON. That might lead to a legal conclusion; we don't know. We are offering evidence as to the surveys and the opinions of expert witnesses.

Mr. PRETTYMAN. In other words, that is an issue in this case, as I understand his answer.

Col. BARRON. I think it is. We can't bind the government as to where the boundary line is.

Mr. KETNER. If that matter is an issue in this proceeding, I again want to renew my request that the hearing in this case be adjourned until some later date, until the Commission passes on the motions which I have made here on the record, and until this matter
63 of the boundary line between the District and Virginia is determined upon, that is as to whether or not that is going to be an issue, so that we will know about it.

Mr. QUIRK. It will take three weeks to settle that.

Commr. PATTERSON. This exhibit is introduced for the purpose of showing the high boundary line or the high-water mark as of a certain date, but there is no contention made that that is or is not the boundary line for the District of Columbia.

Col. BARRON. We don't know. We can't say.

Commr. PATTERSON. They are not contending that that is necessarily the boundary line.

MR. PRETTYMAN. That is what I understood him to say and now as I understand that position, then, Your Honor, the question of where the boundary line is becomes an issue in this case.

Mr. QUIRK. Let us put it this way: Will Col. Barron state whether he expects the Commission in this case to pass on the question whether this line represents the boundary line or where the boundary line is?

Col. BARRON. No.

Mr. QUIRK. You do not?

Col. BARRON. No.

Mr. QUIRK. Are you just putting this in to support more
64 or less your ideas about the lengths of hauls that certain fares—

Col. BARRON. More than anything else.

Mr. QUIRK. Then the boundary question is not an issue here at all.

Col. BARRON. I don't know about that, sir. I am very much afraid that later developments in this proceeding, it may become—of course the Commission can't determine where the boundary line is except maybe for the purpose of its own orders. It might take a determination by Congress or by legislation for it to be final. As you know, there are a number of bills pending now on that subject but I think that this type of evidence is going to be helpful to the Commission, for the purposes that I stated originally; I just don't think that we need to go so far afield on this question of right now where the boundary line is.

Mr. QUIRK. Mr. Commissioner, while we all realize that this Commission in its practice is very broad as to rules of evidence, nevertheless I submit that when you have an issue as important as this one is, and if there is any expectation at all that this Commission is going to be influenced by where this boundary line is supposed to be, then the only way that you can afford to deal with that question is to insist that it be gone into in the competent way, and that all of the evidence on that subject be competent. I
65 hope that the Commission will not be called upon to undertake to decide such an important question as that, as an incident to these fares, but we either ought to have it in here by competent evidence, or we ought to have an understanding from the bench that this Commission will not undertake in this case to determine where the boundary line is.

Col. BARRON. We have stated that we have evidence.

Commr. PATTERSON. I think it will be understood that so far as this exhibit is concerned, that the Commission will not undertake to fix the boundary line, as a result of this exhibit.

Mr. PRETTYMAN. Can we further understand for the Capital Transit Company, that the Commission will not consider that the line on this exhibit indicates the boundary line of the District of Columbia?

Commr. PATTERSON. I think that that can be agreed to, that this line does not necessarily indicate the boundary line between the District of Columbia and Virginia.

Mr. PRETTYMAN. The word "necessarily" worries me; if this does not necessarily indicate it, I will have to put in some evidence on where the boundary is.

Now, if counsel will agree that that line is not presented as evidence——

Col. BARRON. It is presented as evidence.

Mr. PRETTYMAN. Now, just wait a minute; let me com-
66 plete my sentence.

Commr. PATTERSON. This exhibit is not presented as evidence to show the boundary line.

Mr. PRETTYMAN. It is not presented as evidence to show the boundary line; that is fair enough.

Mr. HILL. I would like to further suggest if there is the disposition on the part of anyone to question the present municipal area fixed by the Commission, and if you change the boundary line you would be questioning it, appropriately.

Commr. PATTERSON. We have not fixed the municipal area; they have fixed a commercial area.

Mr. HILL. The zone forms a part of that area.

Commr. PATTERSON. They have fixed a commercial zone.

Mr. HILL. In our challenge to jurisdiction, we are well within our rights in relying on the area fixed by the Commission. Presumably that area would be different if you changed the boundary lines of the Potomac River, and appropriately, if the War Department wants to challenge the present boundary of the District of Columbia, they should have moved to have the municipal area of the proceeding reopened and combined with this.

Capt. DAVIS. Are you taking a position as to where the boundary is?

Mr. HILL. I am well satisfied with the present boundary.
67 I have no desire to go back to 1791.

Commr. PATTERSON. The commercial area fixed by the Commission, in the Motor Carrier Section of the Act, would be much more extensive than anything that might be provided here by their boundary line because it extends, as I understand, over to Alexandria, so this boundary line or this exhibit would have no bearing on that either one way or the other.

Mr. HILL. I think if you move the Potomac River far enough westward——

Commr. PATTERSON. If you move it beyond Alexandria, but it is not likely to be done.

Mr. HILL. I am talking about the western part; if you move the river far enough westward, you will move the boundaries of the commercial area fixed by the Commission.

Commr. PATTERSON. You would have to move the Potomac River beyond the Arlington Cemetery, and this exhibit does not indicate any such thing as that.

Mr. HILL. This exhibit does not but someone else will put one in trying to move it west.

Commr. PATTERSON. Well, we will wait until we get to the other one.

Mr. HILL. We should have an understanding as to where it is.

Capt. DAVIS. Summarizing your testimony, Mr. Ryder,
68 this boundary line here represents in your understanding, does it not, the position taken before the Boundary Commission by certain government agencies as to where the boundary was?

A. Yes, sir.

Mr. PRETTYMAN. Are we away from our agreement?

Capt. DAVIS. I want to make it clear what his testimony was on this point.

Mr. PRETTYMAN. I thought that we had it clear, that it was not offered as to evidence of where the boundary was, and now he sums up his evidence to say that it is evidence.

Commr. PATTERSON. No; he does not, he says somebody in 1791 thought that that would be a good place for the boundary line.

Mr. PRETTYMAN. But the boundary line of the District of Columbia was fixed back there prior to 1791, as the south shore of the Potomac River, so that has been always the problem, to find that point. When you once find that point, then you have got the boundary line of the District of Columbia.

Commr. PATTERSON. I don't think that this testimony is important in this case either one way or the other, because this case is predicated upon the fact that these are interstate movements, or we would be without jurisdiction.

69 Capt. DAVIS. It may be helpful, though, in view of the fact that it is very probable that the boundary is extremely close to these installations but we are not taking a definite position as to where the boundary is, but we don't want to admit that the boundary may be in the middle of the Potomac or some other place.

Mr. LANE. If it is not indicative of what the map purports to show, I move it is incompetent, irrelevant, and immaterial; and it should be stricken from the record, and the next witness called.

It is either put in for the purpose, and the purpose is manifestly indicated by the lines upon the exhibit, or it has no purpose at all, and I move you at this time that unless the purpose is stated and it is not the understanding which seems to be made one minute and then corrected the next minute by another question, that this should be disregarded and the testimony and the exhibit should be excluded from the record.

Commr. PATTERSON. I don't see that the exhibit gives us very much information, if everybody admits that this line is intended to show only the 1791 shore line and let it rest there, that is what it is intended to show.

Capt. DAVIS. Well, sir, we believe it shows more than that. The decisions of the Supreme Court have indicated that the
70 boundary is probably at the high-water mark of 1791, at the date of cession. Now, we can't bind the government in this proceeding as to where the boundary line is. However, we can bring it to the Commission's attention that a position has been taken by government agencies in the past, that the boundary line is along this line shown in this map and that is the purpose of having it in here, because it may be very helpful to the Commission to know that there is a strong probability that the boundary line runs very close to these installations and that may be appropriate to the Commission.

Mr. PRETTYMAN. Could I make just a little bit of a statement? I don't know how familiar Your Honor is with this long controversy and I am not going to detail it but getting back to the original cession of Maryland, which was to the high-water mark on the Virginia shore, the argument always has been, where was the high-water mark on the Virginia shore?

Now, as I remember it, Congress appointed a Commission to find it out and the Commission rendered a report, and there was a big hearing up on the Hill before the full Judiciary Committee of the House for days and days and days.

The result of that was that they never could find the boundary, and they never could determine where the high-water mark
71 was when Maryland was founded, and never has it been actually ascertained finally for all purposes.

Now, if the War Department is going to put in a map saying this is the high-water mark in 1791, then they are going to argue that it is the legal proposition, that is the boundary of the District, and I forsee that they will base all kinds of arguments of the fact that the Pentagon Building is in the District of Columbia.

Exam. MATTINGLY. Suppose they do, they immediately take themselves right out from under the jurisdiction of this Commis-

sion. Why would they want to do that? They are in here seeking the help of the Commission.

Mr. PRETTYMAN. They have three other points:

They would maintain that the Commission has jurisdiction because of all of this that is outside, but that nevertheless, so far as the Capital Transit is concerned and so far as these other companies that have limited intrastate rights in the District of Columbia, that this Pentagon Building is in the District of Columbia.

Now, if they present this exhibit as evidence of where the high-water mark was in 1791, which would enable them to argue that that is the boundary line of the District of Columbia, we should know it now. That is the point I want to make, if that is an issue then we will have to introduce a lot of evidence as to where it was.

72 If it is not an issue, if they don't intend to argue, that is perfectly all right and it is not an issue.

Col. BARRON. I think we are going to argue in this case, that at various times and for various purposes that in our best judgment the high-water mark does cut through the Pentagon Building and lines of the Capital Transit Company do cross that line.

Mr. KETNER. Then I again make this statement, that if that is the issue, the boundary line, we ought to know about it and your order of investigation makes no mention of that issue at all.

Commr. PATTERSON. No; but he says that they will argue the vehicles of the Capital Transit Company do cross that line, wherever it is.

Mr. KETNER. As I understood the Colonel, he stated that he was going to argue that the line on the map would bring the Pentagon Building within the District of Columbia.

Col. BARRON. Only partly within.

Mr. KETNER. That is a boundary issue and if that is it, I again move that Your Honor exclude this exhibit from the record, because that issue is not involved here. If it is we want to know about it.

Mr. WHITTLESEY. May I comment on this exhibit before cross-examination of this witness is undertaken?

I call your attention to the legend in the right-hand corner of this map. It says:

73 "The land owned by the United States of America on the Virginia side of the Potomac River, in relation to the high water mark of 1791."

Now, just to look at the map itself, there is one object on there that immediately attracts the attention. You will note that it is a dim gray photostat, and impressed thereon is a deep, dark, heavy, black line that immediately catches the eye, so it is obvious that

the exhibit is designed for only one purpose, to show the high-water mark of 1791.

Now, of course, as an incident to that, it is going to show the Government installations on both sides of that line, but they have taken here and they have attempted to state graphically it is true, but nevertheless they have attempted to state exactly where the high-water mark of 1791 was.

Now, if that is the case, then they are second-guessing the Supreme Court of the United States, and if they then, when this case is concluded, ask this Commission to establish that, as the mark, or to make a ruling as to fares, which by implication requires the Commission to determine that as the high-water mark of 1791, then they are requiring this Commission to second-guess the Supreme Court, and I think that it is completely irrelevant without even cross-examination of this witness.

74 Col. BARRON. The Commission, I am sure, is quite used to following the decisions of the Supreme Court, and interpreting them wherever necessary, in the cases before it, and I would like to ask, since they object so strenuously to this exhibit, whether they would stipulate; counsel for the Capital Transit Company, that its lines go into Virginia.

Commr. PATTERSON. We will take a five-minute recess.

(Recess.)

75 Commr. PATTERSON. All right, Colonel, you may proceed.

Col. BARRON. I will let the Captain interrogate this witness.

Capt. DAVIS. We have no further questions of this witness.

Col. BARRON. I believe they had him on cross-examination.

Commr. PATTERSON. I had forgotten that.

Col. BARRON. Mr. Commissioner, a young lady came to me just now. She represents some organization of government employees. she indicated to me that she had some statement that she wanted me to introduce for her. I said that I could not do that but that I would bring it to the attention of the Presiding Commissioner. I thought that perhaps the Commission might want to take it up at this time.

Commr. PATTERSON. Off the record.

(Discussion off the record.)

Commr. PATTERSON. This witness was on cross-examination, I think, when we recessed.

Col. BARRON. I asked if they would stipulate regarding the transportation of the Capital Transit Company into Virginia. I do not believe that that particular question was answered.

Mr. HILL. Mr. Commissioner, may I ask one question,

76 there were some appearances entered during the recess.

Commr. PATTERSON. There was a young lady that desires to appear but I think that we should dispose of this witness and then, if it were agreeable to the War Department I would let the young lady enter her appearance then and make her statement.

Mr. HILL. None has been entered thus far?

Commr. PATTERSON. None has been entered.

Mr. HILL. All right.

Mr. PRETTYMAN. As I understand it, Colonel Barron wants the Capital Transit Company to stipulate on the basis that the Capital Transit Company crosses the District line in order to serve the Pentagon Building. I am willing to make that statement.

Col. BARRON. That is satisfactory. As I said in the beginning, your Honor, this and some other maps are a series that I think the Commission is going to find very useful when studying the physical aspects of the case, the geographical area and so forth. I think the Commission may find them very useful evidence.

Commr. PATTERSON. Let us not spend too much time on this. In view of the stipulation Exhibit 1 of the Department will be admitted in the record.

(War and Navy Exhibit 1, Witness Ryder, received in evidence.)

77 Mr. PRETTYMAN. It will become a material issue on which a great of evidence, I think, will have to be presented, if that Exhibit purports to show the boundary lines of the District of Columbia.

Now I had thought a while ago that we had agreed when your Honor suggested that he did not purport to show the boundary—was not offered as evidence of the boundary—I think was the exact statement.

Commr. PATTERSON. That is right.

Mr. PRETTYMAN. Now, I understand from Captain Davis' question, the first question of Mr. Ryder, that it is offered as evidence of where the boundary line of the District of Columbia is.

Col. BARRON. This is essential, as I said to begin with, I tried to make myself clear on the point, evidence available to the War Department and Navy Department of the physical area of property at high-water mark.

Mr. PRETTYMAN. Now, you intend to argue from that, Colonel, that the high-water mark of 1791 is the boundary line of the District?

Col. BARRON. Frankly, if it becomes advisable then we may so argue.

Mr. PRETTYMAN. Then that makes it an issue in the case.

Mr. QUIRK. Mr. Commissioner, in order to get this point straight, I stated my objection once, and I will renew it now,

78 there has been so much said since I made it. I object to this exhibit or map being made part of the record in this case for the purpose of determining or having this Commission determine where the boundary line is, as incompetent, irrelevant, and immaterial, certainly as incompetent.

Commr. PATTERSON. Well, let's let it stand this way, we will let the exhibit stay in, but it will not be used by the Commission for the purpose of determining boundary lines between the District and Virginia; that issue is not here.

Mr. QUIRK. Then you sustain that part of my objection?

Commr. PATTERSON. That is right.

Mr. GOODE. For the purposes of the record; on behalf of the Commissioners of Arlington County, I wish to object to the introduction of this Exhibit in evidence.

Commr. PATTERSON. Overruled.

Capt. DAVIS. Mr. Commissioner, we would like, of course, to reserve our right to argue whatever may be appropriate on the basis of the evidence introduced. In other words, if we believe it appropriate to state at the proper time that the engineers have been apprised as of today——

Mr. QUIRK. You sustained my objection on that point.

Commr. PATTERSON. Well, they can argue whatever they care to argue in that respect if they keep within the record and the Commission will give proper consideration to it.

79 Capt. DAVIS. That is all we want to do—That is all we wanted. We have no further questions of Mr. Ryder.

Commr. PATTERSON. Cross-examine.

(No Response.)

You are excused.

Mr. HILL. Just a moment, Mr. Commissioner, I was waiting for Mr. Prettyman.

Mr. PRETTYMAN. I have no questions.

Commr. PATTERSON. You are excused.

(Witness excused.)

Commr. PATTERSON. Now, if the War Department does not object the young lady may make her statement.

Col. BARRON. Yes, sir; it is all right with us.

Commr. PATTERSON. And if you will just state your name?

Miss VOLKMAN. My name is Florence S. Volkman. I represent the United Federal Workers.

Commr. PATTERSON. Your address?

Miss VOLKMAN. 5320 Rock Creek Church Road NE.

Commr. PATTERSON. Washington, D. C.?

Miss VOLKMAN. Washington, D. C.

Commr. PATTERSON. Now, you may make your statement.

Exam. MATTINGLY. You represent whom?

Miss VOLKMAN. The United Federal Workers, C. I. O., War Department Branch, and I would like to read this statement:

"The undersigned organizations represent Federal
80 workers employed at the Pentagon, Gravelly Point, the Washington National Airport, and the Navy Annex in Arlington, Virginia.

"The transportation costs of these employees in getting to and from work is excessive. Moreover, such fares tend to lower morale among workers who are making an important contribution to the war effort.

"These war workers are also affected, of course, by the general increase in the cost of living. The cost-of-living indices of the Bureau of Labor Statistics, U. S. Department of Labor, with 1935–39 representing 100, show in May 15, 1943, an index of 125.1 for all items, and an index of 143.0 for food. The percent of increase from August 15, 1939, to May 15, 1943, is 26.9 for all items and 52.9 for food. Since low-paid workers spend a higher percentage of their income on food in comparison to the rest of the population, their cost of living has actually increased to a greater degree than the indices would indicate.

"The vast majority of employees in these buildings are represented in the low-paid groups. Thus, in addition to the general increase in the cost of living a further financial burden is imposed upon the workers in these buildings.

"For example, the $1,440 per annum employee has
81 $72 deducted for retirement, and approximately $250 for the withholding tax. If he also contributes ten percent to War Bonds ($175), he is left with $1,254 per annum, including overtime, as his actual salary. If, also, the employee buys a $1.25 weekly pass and spends an extra ten cents fare each day in getting to and from the Pentagon, this amounts to $96.20 per year, or 7.7 percent of his actual salary. His extra fare (ten cents per day) amounts to $31.20 per year, or 2.5 percent of his actual salary.

"Consequently, these employees are forced to decrease their expenditures on necessities, which in turn contributes to decreased work efficiency.

"Also, many employees at the Pentagon work on odd shifts, and are unable to take the Capital Transit busses; they must pay an extra fare of twenty cents per day (ten cents for the short trip from 11th Street and Pennsylvania Avenue NW. to the the Pentagon, and ten cents for the return trip), or $62.50 extra per year, which represents 5.0 per cent of their actual salary. Including the cost of their weekly pass, these employees pay $127.40 per year for transportation or 10.2 per cent of their actual salary. The employees at the Navy Annex in Arlington, Virginia, who are

unable to take Capital Transit Company busses to their
82 building, must also pay the extra twenty cents per day for fare.

"The employees at Gravelly Point and at the Washington National Airport pay an extra fifteen cents per day, which amounts to $46.80 per year, or 3.7 per cent of their actual salary. Including the cost of their weekly pass, these employees pay $111.80 per year for transportation, or 8.9 per cent of their actual salary.

"Although, during this period, the cost of living has risen tremendously, and these patriotic war workers are finding it very difficult to 'make ends meet'; these bus companies have enjoyed considerable increases in their incomes and profits.

"In fairness to these workers, and as an aid in maintaining and heightening their morale, we believe a significant contribution to the all-out-war effort would be made by eliminating the extra fare to and from these buildings.

"We wholeheartedly support the program of the War and Navy Departments for the complete elimination of the extra fares."

Mr. HILL. Now, I ask that all of that statement except the preparatory part in which the lady stated her appearance be
83 stricken from the record, unless substantiated by sworn evidence.

Commr. PATTERSON. That is overruled. That is just an opening statement, and they may undertake to support that by evidence. That is a statement of a preliminary nature.

Mr. HILL. Are we to understand then that that is accepted merely as a statement of position?

Commr. PATTERSON. That is right, it is not evidence. You may proceed, Colonel Barron.

Exam. MATTINGLY. The lady was not sworn.

Commr. PATTERSON. No; she was—no, that is not evidence, she is offering it entirely as an opening statement.

Mr. HILL. Well, I was reluctant to object, but it was obviously meant to influence the decision of the Commission.

Commr. PATTERSON. You may proceed, Colonel Barron.

Capt. DAVIS. Major Ristroph.

Major PAUL L. RISTROPH sworn, and testified as follows:

Direct examination by Capt. DAVIS:

Q. You will please state your name, Major, position, and title for the record.

A. My name is Paul L. Ristroph, Major, Corps of Engineers, Transportation Officer in the Office of the Army Headquarters Commandant, which is in the military district of Washington under Major General Lewis.

Q. Major Ristroph, I ask you to look at this document
84 which has been marked for identification "War Department Exhibit No. 2" and ask you to state what that is.

(War Department Exhibit 2, witness Ristroph, marked for identification.)

The WITNESS. Is this the one you have reference to?

Capt. DAVIS. Yes.

A. This is a base map prepared by the Public Roads Administration, showing the War Department building road net work and nearby access road project, and superimposed on that map are the routes taken by the various transit companies concerned from their points of origin in the District of Columbia and at Roslyn to the Pentagon and the Navy Arlington Annex and to the Washington National Airport and to the building commonly called Army Air Force Annex No. 1, and it is based on the information that we had available from the Transit Companies and from our own personal knowledge as to their routes.

There is one point I might indicate here for those who have the map, that the Gravelly Point Army Air Force Annex, technically known as Tempo Building T–7, is located right at the airport so it covers the word "National." It is located in that little circle there.

Q. Major Ristroph, was this map, and particularly the lines of the bus companies thereon prepared under your supervision?

A. It was, sir.

85 Capt. DAVIS. I ask that this be admitted in evidence as War and Navy Department Exhibit No. 2.

Mr. PRETTYMAN. May we have just a moment?

Commr. PATTERSON. If there is no objection it will be received and identified as War Department Exhibit No. 2.

(War Department Exhibit 2, witness Ristroph, received in evidence.)

By Capt. DAVIS:

Q. Major Ristroph, will you state whether this shows all of the four installations involved in this proceeding?

A. It shows all four of the installations involved in this proceeding, namely, the Pentagon, the Navy Arlington Annex, the Washington National Airport, and included in the Washington National Airport but not shown as a separate building is the building commonly known as Army Air Force Annex No. 1, technically known by the Public Buildings Administration as Tempo Building T–7.

Q. And that is the building located where the word "National" is, which you just referred to?

A. Approximately there, in that circle, sir.

Q. Where is the airport building itself; can you point it out on the map?

A. The airport building, let me get the arrow indicating north and south, it is to the lower portion of the circle, the administration building is just, well, there is an arrow
86 there, it is just east of that building, east of that circle, that is.

Q. The circle where the bus runs around?

A. That is right; that is in the lower left-hand corner of the map.

Mr. HILL. Just one question, Captain.

Is that right above where that figure $15,000 shows?

The WITNESS. Let's see, where is that? That is not $15,000, that is some coordinate we have there, that is S-15,000 I think it is.

Mr. HILL. Is that the building right to the left of that?

The WITNESS. The building is located right at that circle, around that circle there.

Mr. HILL. Thank you.

By Capt. DAVIS:

Q. Now, will you identify on that map, Major, the building frequently referred to as Navy Arlington Annex?

A. The building commonly referred to as the Navy Arlington Annex is not accurate, according to the Public Buildings Administration. It should be "Federal Office Building No. 2." It is located almost directly west of the Pentagon, in about the left center of the map.

Capt. DAVIS. If the Commission please, I think this might be an appropriate time to introduce the correspondence
87 which was requested by counsel, between the Secretary of War and the Commission. Major Ristroph, I believe, can identify these, if any identification is necessary. We have copies for counsel.

I would like first to introduce a letter dated May 3, 1943, signed by the Chairman of the Interstate Commerce Commission addressed to the Secretary of War, and ask that that be admitted as War and Navy Department Exhibit No. 3.

(War Department Exhibit 3, witness Ristroph, marked for identification.)

Capt. DAVIS. In connection with that there was a memorandum from Director Blanning of the Interstate Commerce Commission to Commissioner Aitchison also dated May 3, 1943, which I would like to introduce War and Navy Department Exhibit No. 4.

(War Department Exhibit 4, witness Ristroph, marked for identification.)

Capt. DAVIS. I would like to introduce War and Navy Department Exhibit No. 5, copy of letter from the Secretary of War to the Chairman of the Interstate Commerce Commission, dated May 13, 1943.

(War Department Exhibit 5, witness Ristroph, marked for identification.)

Capt. DAVIS. And as Exhibit No. 6, I would like to offer a letter dated May 15, 1943, from the Chairman of the
88 Interstate Commerce Commission to the Secretary of War.

(War Department Exhibit 6, witness Ristroph, marked for identification.)

Mr. HILL. Mr. Commissioner, these are not being received.

Commr. PATTERSON. No.

Capt. DAVIS. I think it will be helpful if we offer them all as a group.

Commr. PATTERSON. Yes.

Capt. DAVIS. As Exhibit No. 7, I would like to offer a letter from the Secretary of War to the Chairman of the Interstate Commerce Commission, dated June 16, 1943.

(War Department Exhibit 7, witness Ristroph, marked for identification.)

Capt. DAVIS. As Exhibit No. 8, I would like to offer letter to the Secretary of War dated June 21, 1943, signed by Commissioner Patterson.

(War Department Exhibit 8, witness Ristroph, marked for identification.)

Capt. DAVIS. As Exhibit No. 9, I would like to offer letter dated June 24, 1943, to Commissioner Patterson from the Secretary of War.

(War Department Exhibit 9, witness Ristroph, marked for identification.)

Capt. DAVIS. As Exhibit No. 10, I would like to offer
89 a letter dated June 25, 1943, addressed to the Secretary of War, from Commissioner Patterson.

(War Department Exhibit 10, witness Ristroph, marked for identification.)

Capt. DAVIS. I am afraid this is out of order, but I should have offered it sooner, it is a letter of April 27, 1943, from the Secretary of War to the Chairman of the Interstate Commerce Commission.

Mr. KETNER. It is in the record already.

Capt. DAVIS. Is that already in the record?

Mr. KETNER. Yes.

Capt. DAVIS. Well, I think it is well to have a copy of it in here.

(War Department Exhibit 11, witness Ristroph, marked for identification.)

By Capt. DAVIS:

Q. Are these copies of letters which have been marked for identification and offered as War and Navy Department Exhibits Numbers 3 to 11, inclusive, photostatic copies from the official files of the War Department?

A. They are, sir.

Capt. DAVIS. I ask that these be admitted in evidence.

Commr. PATTERSON. If there is no objection they will be received and identified as Exhibits 3 to 11 inclusive, War Department.

(War Department Exhibits 3 to 11, both inclusive, witness Ristroph, received in evidence.)

90 By Capt. DAVIS:

Q. Major Ristroph, I show you here a document which I ask be marked War Department, War and Navy Department, Exhibit No. 12, and this document is marked for convenience as: "War Department, Military District of Washington, Table one," and shows certain distances.

Will you state in more detail, Major, what this table shows?

(War Department Exhibit 12, witness Ristroph, marked for identification.)

The WITNESS. We have attempted to show by this table the comparative transit distances, the transit distances for present rates of fare between selected locations in the District of Columbia and adjacent Virginia. It takes the same point of origin and then by transit distances purports to show the distances to certain installations in the District and the establishments in adjacent Virginia that we are interested in at this time.

As to the manner in which it was made, we took the most recent issue of the transit company's map that we could get and followed the route as closely as we could with an automobile with an officer checking them, Lieutenant Gapling, and that car had previously had its speedometer checked for accuracy and the tire inflation was kept at constant pressure. We ran a leg on these distances from one location to the other and then computed these various distances shown hereon.

91

Q. And that study by Lieutenant Gapling was made under your general supervision, was it not, Major?

A. That is right; yes, sir.

Capt. DAVIS. We have Lieutenant Gapling prepared to testify if it is necessary, but we thought it would probably save time, unless the parties want to cross-examine him as to how distances were themselves made up, but really we believe, unless the parties desire to have Lieutenant Gapling called, that is sufficient identification of the Exhibit, and we ask that it be admitted.

Commr. PATTERSON. If there is no objection this Exhibit will be accepted and identified as War Department Exhibit No. 12.

(War Department Exhibit 12, witness Ristroph, received in evidence.)

Mr. PRETTYMAN. Will it be possible to observe the right to object to it on the ground of materiality, I do not know whether that is proper under your procedure, but if not, I would like to have a moment to examine it.

Commr. PATTERSON. Yes, it may be received without understanding.

Mr. PRETTYMAN. Thank you.

Capt. DAVIS. If the Commission please, we would like to
92 withdraw Major Ristroph and have Captain Loughran testify on this next exhibit, and recall the Major later.

Commr. PATTERSON. That is all right.

(Witness excused.)

Captain JAMES E. LOUGHRAN was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Captain Loughran, will you state your position?

A. James E. Loughran, Captain, Corps of Engineers, Assistant Transportation Officer, Army Headquarters Commandant, Office of military district of Washington.

Q. Captain, I show you herewith a document which has been marked for identification as War and Navy Department Exhibit No. 13, headed:

"War Department Table II" for convenience.

Will you state what that is.

(War Department Exhibit 13, witness Loughran, marked for identification.)

The WITNESS. I identify it as a photostatic copy of a tabulation prepared under my immediate supervision.

By Capt. DAVIS:

Q. And generally speaking what does this Exhibit show?

A. This Exhibit is a computation of the average one-way travel distances along transit lines between residences of
93. War Department employees in the District of Columbia and the Pentagon and Gravelly Point buildings.

Q. Will you tell us in general how this table was made up?

A. In response to questionnaires, War Department employees indicated their area of residence in terms of the nearest street intersection. The number of replies of people indicating their area residence was then tabulated, the actual distances between that area residence and the buildings, the Pentagon and Tempo 1 build-

ings was then used to compute the average distance for those people from their area of residence to their building of employment.

Q. These distances were based upon the routes as traveled by the transit companies, were they?

A. These distances were based on the actual distance traversed along transit routes as part of a physical check of special field analyses made for this purpose.

Q. Will you explain what "C. T. Co. R–2" is?

A. C. T. Co. R–2 represents Capital Transit line designated by that company as R–2, which runs from 19th and Constitution to the Pentagon.

Q. That is the one that runs over Memorial Bridge?

A. Via Memorial Bridge.

Q. And will you state for the record what C. T. Co. Q–2 line is?

94 A. C. T. Co. Q–2 is the Q–2 line of the Capital Transit Company which has its Washington terminus at 7th and Constitution Avenue N. W., and proceeds then via the 14th Street Bridge to the Pentagon.

Capt. DAVIS. We would like to recall Major Ristroph now. We are perfectly willing to have Captain Loughran answer any questions.

Col. BARRON. Has this been admitted?

Commr. PATTERSON. Not yet.

Mr. HILL. Now, Mr. Examiner, we object to that and we would like to have the ruling withheld so that we may examine it.

Commr. PATTERSON. It will be identified as Exhibit No. 13, we will just reserve its acceptance for the time being.

Capt. DAVIS. All right.

Mr. WHITTLESEY. Mr. Examiner, are you excusing this witness, or will you allow reservation of right to cross-examine.

Commr. PATTERSON. You may bring him back for cross-examination before he is dismissed, but not to put in some particular evidence by another witness.

Capt. DAVIS. Off the record, it happens that some of these Exhibits were made up by the Captain here and some by the Major. I think it would help if we accept them in the same order in which they are marked.

95 Mr. WHITTLESEY: All right, we have no objection to that.

(Witness withdrawn.)

Major PAUL L. RISTROPH, was recalled to the stand and further testified as follows:

Direct examination by Capt. DAVIS:

Q. Major Ristroph, I show you here a document which I will ask to be marked for identification as War and Navy Department

Exhibit No. 14, which is captioned War Department Table III, will you state what that is?

(War Department Exhibit 14, witness Ristroph, marked for identification.)

The WITNESS. This table shows the number of employees in the Pentagon and Gravelly Point, Tempo. T–7 building, for the months of May and July, 1943. They are taken from monthly statistical reports prepared in the Office of the Army Headquarters Commandant. Those are based on reports submitted by the various agencies concerned.

It shows the number of civilian and military personnel combined, the number of people who work in that building who are employees of the Public Buildings Administration, that takes in the janitorial service, and so forth, building upkeep, and those of the welfare and recreational associations, that is cafeteria employees and services of a like nature.

By Capt. DAVIS:

Q. And this reflects the latest figures available, does it not?

96 A. This reflects the figures available as of the end of each of those months concerned.

Capt. DAVIS. We would like to offer this in evidence.

Commr. PATTERSON. If there is no objection, it will be received and identified as Exhibit No. 14, War Department.

(War Department Exhibit 14, witness Ristroph, received in evidence.)

By Capt. DAVIS:

Q. Major Ristroph, I show you a document which I will ask be marked in identification of Exhibit No. 15; this table is captioned "Table IV, War Department Summary of bus passengers carried between the District of Columbia and the Pentagon and Gravelly Point" during the periods 6 August 0600–2400 and 7 August 0001–0600.

(War Department Exhibit 15, witness Ristroph, marked for identification.)

By Capt. DAVIS:

Q. Will you state in general what that shows, Major?

A. This table indicates more or less what the caption states there that it is a summary of the bus passengers carried to and from these buildings, War Department buildings, located in Virginia, that is the Pentagon Building and Tempo. Building T–7, commonly called the Army Air Force Annex.

We are interested primarily in th people who move between the District of Columbia to these buildings, but we thought that for

97 purposes of completeness we would indicate the passengers handled between the Virginia points. It is broken down as to buildings and as to the line via which the people arrived at these buildings and the line by which they departed from the building.

Mr. LANE. Captain Davis, may I ask the exact times.

Capt. DAVIS. That is 6 a. m. to midnight on August 6th and one minute after midnight to 6 a. m. on August 7th.

Mr. LANE. It is a full 24-hour check only.

Capt. DAVIS. That is right.

The WITNESS. Yes.

By Mr. DAVIS:

Q. Now, will you state the basic information on which this table was based, Major?

A. The information was derived from field counts made at the various installations and bus stops, and physical count of the people getting off of the bus and getting on the bus, and the time at which that was done.

Q. And was that check made under your general supervision?

A. It was made under my general supervision. We planned the check and drew up the form and indicated where the men were to be stationed and in some instances in detail the number of men, if it was complex, and saw to it that we had covered the full twenty-four hours of the day, and the men were instructed that this check was to be accurate. The data obtained was for Friday, the men had previously worked on Thursday all

98 through the day just for the purpose of practice and they took this check on Friday and another one on Saturday.

The forms which they used were made just as simple as humanly possible, they could have gotten a lot of other data at that time but we got only that data we thought was germane to the problem here so that there would be no chance of any complexity in the check or any need for any inaccuracies.

That was then taken, the field tabulations were then taken into the office and summarized.

Capt. DAVIS. Mr. Commissioner, we have no further questions on this exhibit at this time. We would like to offer it in evidence.

Mr. PRETTYMAN. I would like to reserve cross-examination.

Mr. HILL. I should like to have the ruling reserved if you will, Mr. Commissioner.

Capt. DAVIS. Well, do you object to the exhibit?

Mr. HILL. I do not object to it being identified but I do object to its being received in evidence at this time.

Commr. PATTERSON. It will be identified as Exhibit No. 15, War Department.

Mr. KETNER. Well, this exhibit has information as to Virginia passengers that are purely intra-state Virginia passengers, aren't they, as referred to on Exhibit 15.

Capt. DAVIS. Yes; that is correct. As the Major stated, that was put on there as a matter of completeness. We are not making any contention, of course, as to the purely Virginia fares here.

And if the Commissioner please, I would like to withdraw Major Ristroph now and recall Captain Loughran again for the next two exhibits.

(Witness withdrawn.)

Captain JAMES E. LOUGHRAN was recalled to the stand and further testified as follows:

Direct examination by Capt. DAVIS:

Q. Captain Loughran, I show you a document which has been marked for identification as Exhibit No. 16 and is captained Table V, War Department, number of A. B. & W. and A. & F. bus passengers arriving, getting off, getting on, and leaving the Pentagon during rush hours of May 1943.

(War Department, Exhibit 16, witness Loughran, marked for identification.)

Mr. LANE. Is that for the entire month of May?

Capt. DAVIS. I believe the witness will explain that.

By Capt. DAVIS:

Q. Captain, would you explain in general what this table shows?

A. I identify it as a photostatic copy of a tabulation prepared under my supervision which shows the number of people, the number of passengers arriving, the number of people arriving in those busses, number of busses arriving, number of people getting off those busses, getting on those busses, and in those busses when they left, during the fifteen-minute periods indicated, based on a physical count at the Pentagon Terminal on May 14–15.

Q. This was on May 14, on one day.

A. May 14–15.

Q. This was based on a physical count made under your supervision?

A. That is true, sir.

Exam. MAYFIELD. Is the top half the 14th and the bottom half of the 15th, is that the way in which it is set up; or how?

The WITNESS. The a. m. hours, the period 0630 to 1015 were for May 15th. The information for the period 1530 to 1830 were obtained on May 14th.

Capt. DAVIS. I might say for the record that 1530 is Army time for 3:30 p. m. and 1830 is 6:30 p. m. In other words, it shows the afternoon of the 15th and the morning of the 14th.

The WITNESS. That is true, sir.

By Capt. DAVIS:

Q. Any further explanation you would like to make on this exhibit in order to clarify it?

A. I think the detail is self-explanatory.

Capt. DAVIS. We offer War and Navy Department No. 16 in evidence.

Commr. PATTERSON. It will be identified as Exhibit No. 16. If there is no objection to this exhibit it will be re-
101 ceived in evidence.

Mr. HILL. Well, we would appreciate it if you could withhold ruling.

Commr. PATTERSON. Well, I heard no objection.

Mr. HILL. It is rather difficult, we may or may not object to some of them; some of them I know we will object to.

By Capt. DAVIS:

Q. Captain Loughran, I show you a document which I will ask to have marked as War and Navy Department Exhibit No. 17, which is captioned:

"Title VI, War Department, Analysis of Capital Transit Company pass use," was this tabulation prepared under your supervision?

A. This is a photostatic copy of a table prepared under my immediate supervision.

(War Department Exhibit 17, witness Loughran, marked for identification).

Capt. DAVIS:

Q. Will you state in general what this shows and how you prepared it?

A. Included in a questionnaire to War Department employees was a question relative to the use made by those who owned Capital Transit Company Weekly Passes as to their use of those passes other than to and from work.

Q. In other words, you asked the employees on this question-
naire first whether they used passes and second if they
102 did, how much they used the passes aside from going to and from work.

A. If they held a pass how many times they used it other than to and from work. The number responding to that question is indicated in the column headed "Total Number."

Some of the personnel questioned did not respond to that one question. The number failing to answer to that one question is shown in the column headed "No Reply."

The personnel who did not own a Capital Transit Pass is indicated in the column headed "No Pass," and then by adding the number who made no reply to the number who own no pass and subtract that from the total number we get the total number of pass users, shown in the column headed "Pass users."

Each of these columns show information relative to the personnel who use the lines indicated under "Building character and line" where that is the first terminal carrier reaching the Pentagon or Gravelly Point Building or their first carrier in departing from the Pentagon or Gravelly Point building. That is on the left.

The right section of the tabulation concerns the amount of pass use reported by the personnel previously referred to, the use other than to or from work being indicated in the column headed "Total nonwork," the next column headed "Average nonwork"
was obtained by the above computation of dividing the total
103 nonwork passenger use by the number of passenger users computed to that total.

The column headed "Average work only" relates to the number of trips to and from work, the product of six times two trips each day.

The information in the column headed "Total use," was obtained by addition of the items indicated in the preceding two columns, representing the total use of the weekly passes by the personnel involved.

The last column headed "Value of Ride" represents, in cents, the value of—the value average of the ride obtained by those personnel who used passes and represents the quotient of the pass value, $1.25, divided by the total use obtained of that pass as indicated by the personnel questioned.

For clarification I might indicate the first division, $1.25, the first item in the Table, total use column, 16.275 furnishes a quotient .0768 shown in the first item in the column "Value of Ride."

Q. By now, these figures, of course, are averaged so that there might be some individual employees who used their pass a great deal more than 4.275 for the first line and some were used somewhat less, is that not right?

A. That is true.

Commr. PATTERSON. Are you finished with this exhibit?

Capt. DAVIS. Yes, sir.

We would like to ask that it be admitted.

104 Commr. PATTERSON. It will be admitted as Exhibit No. 17.

(War Department Exhibit 17, witness Loughran marked for identification.)

Commr. PATTERSON. We will recess until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m. a recess was taken until 2 o'clock of the same day.)

105 AFTERNOON SESSION

(The hearing was reconvened at 2:00 o'clock p. m.)

Commr. PATTERSON. You may proceed with your witness, Colonel.

Captain JAMES E. LOUGHRAN, previously sworn, further testified as follows:

Capt. DAVIS. Before the recess, if Your Honor please, we offered War and Navy Department Exhibit No. 17, and unless counsel wish to cross-examine that at this time I will now proceed with the next exhibit, which is No. 18. This exhibit is designated War Department Table 7, and headed: "Analysis of one-way trans-Potomac fares paid by Pentagon and Gravelly Point employees."

Direct examination by Capt. DAVIS:

Q. Did you prepare this table, Captain?

A. I did, sir.

Q. Will you explain in general what it shows?

A. This tabulation presents a summary of the fare distribution information, the fare being reported, the several fares being reported by individuals who are War Department personnel, as their one-way fare between their office and home or home and office.

The total number reported is shown, and the distribution of
106 that total by Terminal Transit Company, the last line that they used as they entered the building or the first line that they used as they left the building, and by the fare they paid.

This analysis covered the information supplied of the Pentagon and Gravelly Point employees.

It is based on the questionnaires returned by War Department personnel and concerns only those who are resident in the District of Columbia or Maryland.

Aside from the numbers and supplementing the absolute distribution, a percentage figure distribution by fares of the personnel using each Terminal Transit Company is included in this tabulation.

The word "pass" as for example in the column headed "Pass plus 5 cents" refers to the Capital Transit Company weekly pass.

The word "Token" refers to the Capital Transit Company token.

The word "ticket" refers to the A. B. & W. Company one-way ticket, which tickets are sold in books and as here used "ticket" refers to a coupon valid for one one-way trip, half of a round-trip ticket.

By Capt. DAVIS:

Q. This is based on questionnaires of all of the employees covering a typical day, is it not?

A. Yes, sir; the replies received were to a question as to the one-way fare paid between home and office or office and
107 home reported separately for a. m. and p. m.

Capt. DAVIS. That is all of the questions that we have of the Captain at this time.

Cross-examination by Mr. QUIRK:

Q. Captain, what did you say the percentage figure shown on Exhibit 18 represents?

A. The percentages shown on this exhibit represent the percentage distribution by fare groups by Terminal Transit Company. To illustrate or clarify that point, you will observe the first line, the percentages, 66.5; 15.8; 6.3 and 11.4 represent the distribution by fares of the people who reported fares paid to the Capital Transit Company, using either R–2 or Q–2 line.

Cross-examination by Mr. HILL:

Q. They are horizontal percentages?

A. Yes, sir.

Q. Taking the first line where you show a total at the end of 8,053 and 100 on the percentage column, if you add that horizontally it will add up to those figures, won't it?

A. Yes, sir.

Mr. PRETTYMAN. I would like to reserve cross-examination of the witness according to the procedure that we followed before lunch.

Commr. PATTERSON. Is there any further cross-examination at this time?

108 Capt. DAVIS. If it is possible we would like to get the cross-examination of these witnesses completed today as far as these exhibits are concerned. We are anxious to expedite the matter.

Col. BARRON. It would save us having to recall a lot of witnesses at a later date; we have an awful large number of them and this is only a small percentage that is here.

Commr. PATTERSON. Can you give us an indication as to about when you would like to have this witness return for cross-exami-

nation? You realize that we will need a little time to study these exhibits?

Mr. PRETTYMAN. We will begin to study them. We have begun to study them at once, Your Honor, but just how long it will be before we crystalize any questions we might have it is impossible for me to tell at the moment. These, as you know, are complicated and technical matters, these traffic counts, but we can assure you so far as we are concerned that we will be ready just at the earliest possible moment. I don't think that we will be wasting time because to go into a cross-examination now I think I might have a lot of questions that we might not later.

Mr. HILL. Changing from one witness to the other has been a little bit confusing, too.

Commr. PATTERSON. The purpose of that is to get their testimony in the record in an orderly way.

109 Capt. DAVIS. We want to keep the exhibits in a logical sequence. I am sorry if that has caused any confusion.

Comm. PATTERSON. Perhaps these witnesses with respect to these exhibits could be excused until tomorrow or the following day.

Col. BARRON. That is all right.

Commr. PATTERSON. Would you be ready tomorrow or the day after tomorrow?

Mr. HILL. Tomorrow would be quite agreeable to us, in the morning, Mr. Commissioner.

Commr. PATTERSON. All right, then.

Mr. HILL. I mean on what we have so far. Are these all of the exhibits?

Capt. DAVIS. This is all by Captain Loughran. Major Ristroph has a few more.

Mr. HILL. I don't know whether we would be ready on Major Ristroph yet or not. I don't know what he is going to put in.

Commr. PATTERSON. Suppose that you put in all of your exhibits, and then we will see if we can get some kind of an indication as to when they can be cross-examined.

Capt. DAVIS. I would like to offer Exhibit No. 18.

Commr. PATTERSON. That will be identified as Exhibit No. 18.

(War-Navy Exhibit 18, Witness Loughran, marked for identification.).

110 Major PAUL L. RISTROPH witness previously sworn, further testified as follows:

Direct examination (cont.) by Capt. DAVIS:

Q. Major Ristroph, I show you here an exhibit which I will ask to be marked for identification as War and Navy Department Exhibit No. 19, which is captioned:

"War Department, Table VIII—Analysis of passengers carried and daily fares paid by Pentagon and Gravelly Point, T–7 employees," as of August 1943. Was this table prepared under your supervision?

A. It was, sir.

Q. Will you explain in a general way what it shows?

A. This table is based on two tables that were previously submitted. One of them was the 24-hour count showing the total number of passengers handled by each of the companies and the other table was the distribution of those passengers into fare groups.

We took the total number of passengers carried by each Terminal Line, and expanded those figures in accordance with the ratios that we had obtained on this table that Captain Loughran had submitted previously.

There is one thing that I should perhaps make clear here:

111 We have this divided into two portions, one of them the rate of fare within the District of Columbia, and the other the rate of fare across the Potomac only.

Opposite each of the Terminal Companies is shown a figure under "Rate of fare within D. C." That rate of fare was not paid to each of those companies but merely paid by patrons of those companies who had previously ridden the facilities of the Capital Transit Company and that was the rate of fare that they had paid in the District for that ride.

In summation, this is merely an expansion of the basic data of the 24-hour count and the distribution of fares into an over-all figure showing the amount paid by employees riding in the various facilities.

Mr. Hill. Do you remember the number of the exhibit of which this is an expansion?

The Witness. I think it was the one submitted just previously; I think that that was Table 7, if I am not mistaken, sir, that is it, sir.

By Mr. Davis:

Q. Referring to Table 7, which has been introduced as War and Navy Department Exhibit 18.

A. That is right.

Q. Now, these figures on the left-hand column under the heading, "Rate of fare within D. C.," are the amounts paid to the Capital Transit Company in all cases, is that right?

A. That is right.

112 Q. And those in the right-hand half being rates of fare across the Potomac, show the amounts as paid to the various companies in accordance with the different lines as shown?

A. That is right, sir. I might add that these figures in this left-hand column, "Rate of fare within D. C." applies to the District of Columbia alone, no outside extensions. We did not take into consideration any fares paid outside of the District, sir, at least any fares paid for travel outside of the District.

Q. If a passenger came from Bethesda, Maryland, or some place outside there, it did not include any amount that he paid on that side of the District Line?

A. No, sir.

Mr. PRETTYMAN. As I understand this data, the distribution is based on your questionnaire, is that the way you have got the distribution between 10 cents and the pass?

The WITNESS. You will notice that the previous table there, it is listed as Table No. 7, Exhibit No. 18, I believe, it shows the fare distribution and what we did was to expand the 24 hour totals in accordance with those ratios.

Capt. DAVIS. I offer this exhibit in evidence.

Commr. PATTERSON. Admitted as Exhibit 19.

(War-Navy Exhibit 19, Witness Ristroph, admitted in evidence.)

113. Cross-examination by Mr. WHITTLESEY:

Q. May I offer a preliminary question at this time? Did I understand you to say that those figures shown under the caption "Rate of fare within D. C." relates only to passengers who pay a fare for travel within the District of Columbia?

A. And who later use facilities of the Virginia transit companies or the Capital Transit Companies to go to the Pentagon or to Gravelly Point.

Q. Let us take for example this line "e" there where it says, "W. V. & M. Coach Company."

A. All right, sir.

Q. You have, under 8⅓ cents, you have 113 people, presumably, who paid a total of $9.41.

A. That is right.

Q. By that do you mean there were 113 people who placed a token in a fare box of the Capital Transit Company and rode some place within the District of Columbia and then got off and paid an additional fare on the buses of the Coach Company to travel to Pentagon? Is that what it means here?

A. That is possible; yes, sir. It applies equally well to the return trip.

Q. I see. These are total figures in and out of Pentagon.

114 A. That is right.

Direct examination (cont.) by Capt. Davis:

Q. Major, I now show you an exhibit which I will ask to have marked for identification as War and Navy Department Exhibit No. 20, which is captioned "Table 9." This is captioned:

"Comparison of probable effect of various fare plans between Washington and The Pentagon and Gravelly Point (T-7) on gross revenues derived from operations concerned."

Was this exhibit prepared under your supervision?

A. It was, sir.

(Tabulation marked "War-Navy Exhibit 20, Witness Ristroph," for identification.)

By Capt. Davis:

Q. Will you explain in general what it shows?

A. This table may take quite a bit of explaining in its detail but in its generalities it is simple. It is an attempt, if you will, to apportion revenue to the various companies under different possible fare plans. Some of these plans have been proposed and others have not. They are just merely possibilities.

We have analyzed that on that basis, so that we may determine the probable effect upon the revenues of the company of several possible proposals.

115 We are not necessarily making these as proposals to the Commission but it is an analysis to show what would happen if such and such a proposal were submitted or being considered.

We have in reality an analysis here of five possible proposals. One of them would be based on 13⅓ cents tickets.

Now, that rate of fare, perhaps I had better explain that in detail. That is based on the assumption that all present fares would remain as they are and that superimposed on that fare structure there would be a 13⅓-cent ticket, or a book of tickets, one part of the ticket being good for a ride on facilities of the Capital Transit Company and the other part of the ticket being good for a ride on the facilities of the Virginia companies, with the exception that the 13⅓-cent ticket would not apply to the Rosslyn shuttle.

We have there the probable revenue that would be derived by the various lines from such a ticket, as compared with the present annual revenue as presented in the table previously presented, Table 8.

In this probable revenue for the 13⅓-cent ticket, we had to make some arbitrary assumptions which I would like to state.

116 We do not know what would be the split of this fare, if you will, between the Capital Transit Company on the one hand and on the Virginia companies on the other and we

arbitrarily assumed a split of 50 per cent each, or equal division of the fares for purposes of computation and analysis only.

The same thing applies to the plan entitled "5 cents trans-Potomac only." Under that plan, if it were to go into effect you would have the District fare remain as it is at present but the fare from 12th and Pennsylvania Avenue and from 11th and E Streets would be changed to 5 cents in lieu of the present 10 cents, and it was further assumed that there would be no split between the Capital Transit Company and the Virginia companies but that each company would retain that which they collected. In this case the Virginia companies would retain the 5 cent fare and the Capital Transit Company would retain the District fare.

The 10 cent joint fares are considered one point that might come up and that would mean that you would have a 10 cent fare that would apply from any point in the District of Columbia, to any of the four installations concerned, a total fare to be collected by the originating company, or the company on which the passenger first boards a bus or a street car, and that that company would in turn issue a transfer or some means of identification to the passenger so that he could board the Terminal Transit line, in
117 most instances here that of the Virginia companies or some other instances that of the Capital Transit itself, present this pass or other evidence, and continue his ride without the payment of additional fare.

There would then be an accounting among the companies as to the value of this transfer and what proportion of the fare each would get.

But here again we assumed a 50–50 division of the fare for purposes of computation.

On the token or 10 cents, similar to the 10 cent joint fare, except that a passenger could make the trip on either a token or a dime similar to the cash fares paid on the Capital Transit Company now; that is their fares exclusive of the weekly passes, and the District fare, the plan entitled "District fare" would mean the extension of the present fare structure in the District of Columbia to include the four outlying installations, with a similar split revenue as we have had on the others, that is 50 per cent to each of the companies.

These figures show respectively, I doubt if you want me to get into more than the over-all picture on that, the 13⅓ cent ticket as explained previously would result as far as the Pentagon and Temporary Building T–7 at Gravelly Point is concerned, of a reduction of about 11.13 per cent or an average of $9.60 annually per passenger.

118 The 5 cents trans-Potomac only would result in an estimated reduction of 13.21 per cent or $11.47 annually per passenger.

The 10 cent joint fare would result in an annual reduction of 28.15 per cent over-all or $24.44 per passenger.

The token or 10 cent plan would result in an annual reduction of 35.52 per cent or $30.84 for the average passenger.

The District fare would result in an over-all reduction of 42.73 per cent in revenue or of $37.11 per passenger.

There is one thing that I failed to make clear, I believe, and I would like to make that point clear right now, that where we have these last three plans, the 10 cent joint fare and the token or 10 cents or the District fare, that means that that fare would apply flatly, that would automatically eliminate the 5 cent fare or the lower fares and everyone would pay the same fare regardless of the distance he may have to travel as long as it is confined to, within the District to the other points.

By Capt. DAVIS:

Q. Now, with reference to the last three columns here, headed "District Fare," you figured that on the basis of permitting the employee to use his Capital Transit pass if he has one to these four installations from any point within the District?

119 A. That is right. It was figured on the flat fare paid in the District now, the average fare paid in the District, as determined from these questionnaire tabulations, Table 7, I believe it was.

Q. That would assume a division on the basis of the value of the pass for the average passenger?

A. It would assume a split of 50–50 per cent between the various companies, or among the Capital Transit Company and the Virginia companies.

Q. And those figures in turn would be based upon the value of the pass as shown in the other exhibits?

A. These figures that I have presented here are based on the average figures as determined from the previous tables submitted.

Cross-examination by Mr. HULL:

Q. Would you clear one thing up for me, please?

On Exhibit 20, your Rosslyn-shuttle under the third heading there, for "A & F," how do you reach the figures that are shown with plus signs under the 10-cent joint fare?

A. You see, instead of having the people who walk across the Key Bridge there, who originate in the District, these are for people who originate in the District or Maryland, instead of having them pay the 5-cent fare as at present, they would pay the 10-cent flat fare.

Q. From anywhere in the District?

120 A. Yes, sir.

Q. Your 10-cent joint fare is meant to apply from any point in the District in connection with the Rosslyn shuttle, is that correct?

A. That is correct.

Q. That is what you have assumed here?

A. Yes, sir.

Q. Now, have you likewise assumed that thereupon the Arlington & Fairfax will receive more than a nickel out of the joint fare?

A. No; that it would receive a 50–50 split of the joint fare, but there are a number of people who get on that line without having paid any previous fare, you see, who originate in the District of Columbia, and the fare for those being 10 cents made that a slight increase there.

Cross-examination by Mr. DUNLOP:

Q. What did you mean when you said that there were some people who originate in the District of Columbia but would not pay any Capital Transit fare, would not ride on Capital Transit busses?

A. That is right, sir; we have some people there.

Q. Who ride exclusively on the A. & M. busses and walk across the bridge?

A. That is right. We have some particular instances, one of them I recall, I don't have the data available but the

121 one case there, where a man walked daily, I think it was some four miles, principally for the exercise, I believe, but anyway he was a walker and he paid no fare in the District, you see, yet he did come from the District.

Q. How do you split that?

A. That would go to the company which collected it, there would be no way of splitting it between the companies, you see.

Cross-examination by Mr. HILL:

Q. Then to follow it a little further, you are assuming that there would be no nickel fare from Rosslyn to the Pentagon?

A. I would assume that if we put in a 10-cent fare, that that would apply jointly wherever the District passengers may board the bus.

Q. You are assuming an increase in an intrastate fare which does not come within the scope of this investigation, that is correct, isn't it?

A. That, sir, I couldn't state. I couldn't answer your question as to what I have assumed stated in that manner. I can only state what I have assumed in figuring these computations and that is that anyone originating in the District of Columbia would pay

the flat fare regardless of where he originated in the District of Columbia.

Q. If I understood you, if he walked over into Virginia and took the busses he would still have to pay one dime.

122 A. That was my thought of it, sir.

Q. Whereas he now pays a nickel and it is an intrastate fare?

A. The passenger originated on the other side of the line, you see. We took these people originating in the District alone.

Direct examination (cont.) by Capt. DAVIS:

Q. Just to clarify that, Major, these figures here were based upon the other tables which in turn were based upon questionnaires on which the employees indicated their respective residences?

A. Yes, sir.

Q. And did you attempt to cover anything so far as people living in Virginia were concerned?

A. This excludes all persons living in Virginia.

Q. In order to carry that out, in accordance with those figures in your questionnaire, you assumed that everyone who lived in the District would pay these fares under these different plans from the place where they lived?

A. That is right.

Q. So these figures do not necessarily affect any intrastate rates in Virginia; they are not included in this at all, are they?

A. It was not intended to include those at all, and these are merely probabilities that may be modified as the Com-

123 mission may see fit and eliminate this phase of it or add to other phases of it but that was the basis for these figures and the total reductions and apportionments.

Mr. HILL. I don't want to get into cross-examination but had you given any thought to how to distinguish between the passenger who walked to Rosslyn from the District and who walked to Rosslyn from some point in Virginia?

The WITNESS. No, sir.

Mr. KETNER. You are assuming that if a passenger walked across the bridge to Rosslyn, that would give this Commission jurisdiction over that transportation within Virginia?

Col. BARRON. That is a legal question.

Capt. DAVIS. No, sir; we did not ask for his opinion on that; we merely asked him to explain how he made up the tables.

Commr. PATTERSON. What the figures show, regardless of who has jurisdiction.

Capt. DAVIS. We believe this is a logical way to make up the table.

The WITNESS. If they don't have the 10-cent fare applicable to the Rosslyn shuttle, that is just a simple matter of mathematics after you have all of your data here.

Mr. HILL. It would be the law of diminishing returns, wouldn't it, for the Arlington & Fairfax?

The WITNESS. Yes, sir.

124 Mr. HILL. Every time you throw out a nickel, it is gone forever.

Col. BARRON. We are certainly not suggesting that any intrastate fares or any other fares be raised.

Capt. DAVIS. I would like to offer this exhibit in evidence.

Commr. PATTERSON. It will be identified as Exhibit No. 20.

(Tabulation "marked Army-Navy Exhibit 20, Witness Ristroph," received in evidence.)

By Capt. DAVIS:

Q. Major Ristroph, these figures which you have given do not cover any traffic to and from the airport as such, as distinguished from the Army Air Force Annex, do they?

A. None of these figures that were prepared in my office and submitted today contain any counts or data or otherwise, that is, passenger data, or fare data to the National Airport.

Q. Could you state for the record what the figure is of the number of passengers transported each day to and from the National Airport?

A. I will quote from memory but I am pretty sure of this figure. We checked that along with the other installations and we found out that the daily number of passengers to and from the Airport, that is between the District and the Airport, as distinguished from the Temporary Building T-7, the

125 total passengers was 1,930, or an average number of people of 965, I believe it comes out.

Q. And of course these exhibits do not include the people going to and from the Navy Annex.

A. They do not, sir.

Capt. DAVIS. I will state that we are going to offer other evidence on those, sir. That is all of the direct examination that we have on Major Ristroph at this time, and it may be that later on we would like to ask him some questions on some of the more general phases of it, and of course we will have rebuttal after the cross-examination.

(Witness excused.)

EDWARD E. FRANKLIN, sworn as a witness, testified as follows:

Direct examination by Capt. DAVIS:

Q. Dr. Franklin, will you state your name and position for the record?

A. Edward E. Franklin, statistician, Office of the Secretary of War.

Q. What are your duties, Dr. Franklin?

A. Assembling and publishing comprehensive personnel statistics for the War Department.

Q. Will you state very briefly your past experience?

A. I have been at this present work slightly over a year,
126 and preceding that I spent ten years as a member of the faculty of Johns Hopkins University, in the field of statistics.

Q. You are a Ph. D.?

A. That is correct.

Q. I show you here an exhibit which I will ask you to have marked for identification as Army and Navy Department Exhibit 21, which is headed,

"Table X. War Department. Percentage Distribution of Departmental Employees by Service and Grade." Was that table prepared under your supervision?

A. Yes, sir.

Q. It was prepared on the basis of information compiled from War Department official files?

A. That is true. It was prepared as a result of a direct investigation of all of the constituent parts of the War Department based on pay roll records.

Q. And this table shows, does it not, the percentages of employees in the different Civil Service classifications, with the respective base salaries as shown in the third column?

A. That is correct, for the Departmental Service.

Q. For the Departmental Service?

A. Yes, sir.

Q. In and around Washington?

A. That is right.

127 Capt. DAVIS. If Your Honor please, I offer this as Army-Navy Exhibit No. 21.

Commr. PATTERSON. It will be identified as Exhibit No. 21.

(Army-Navy Exhibit 21, Witness Franklin, marked for identification.)

Capt. DAVIS. I would like to offer it in evidence, if the Commission cares to receive it at this time.

Mr. HILL. We object to it.

Mr. QUIRK. It is incompetent and immaterial.

Mr. HILL. It is incompetent, immaterial, and irrelevant.

Capt. DAVIS. If the Commission please, we believe it material, as showing the low income distribution of these employees, which in turn has a bearing upon their ability to pay these high fares.

Commr. PATTERSON. If that is the only objection that you have, we will receive it unless there is some other objection or factual matter.

Mr. WHITTLESEY. Mr. Examiner, may I ask the witness then two or three preliminary questions on this?

Commr. PATTERSON. You can.

By Mr. WHITTLESEY:

Q. Dr. Franklin, does the percentage column relate to figures only for the War Department or for all Departments?

A. War Department only.

128 Q. Now, where you say, "C. A. F. 1, 1 percent, base salary $1,260, do you mean to say by this exhibit, that the salary of those people who are classified as C. A. F. 1, is $1,260 a year or is it some other figure?

A. $1,260 per year is the base salary.

Q. Isn't it a fact that in addition to the $1,260 a year that person draws 21.16 per cent additional salary?

A. Yes, sir.

Q. And isn't it a fact, furthermore, that there are C. A. F. 1's, whose base salary is more than $1,260 working for the War Department?

A. By technical definition every base salary, we are taking it as a group, there is such a thing as a promotion within the group.

Q. Well, now, in other words, your salary is a range, is it not, from $1,260 a year up to some other figure in the group?

A. Within the group, that is true.

Q. So you may have one person in that one per cent who draws $1,260 and you may have another one who draws—what is the top of the range, $1,320?

A. It goes up to the next group.

Q. So you may have the next person drawing $1,420, isn't that correct?

A. You say that you may have?

129 Q. Yes.

A. That is quite possible.

Q. That is in this first group there that you have got designated as $1,260?

A. That is possibly true.

Q. And you have previously stated that in addition to the $1,260 they draw 21 or almost 22 per cent additional?

A. At that salary level, yes; the overtime pay.

Q. So that this exhibit then, Doctor, does not portray except in isolated instances or by pure coincidence, it does not portray the salary of anyone, does it?

A. I am unable to agree with that.

Commr. PATTERSON. It shows the lowest amount that anyone in that group could get, isn't that true?

Mr. PRETTYMAN. No, sir; it does not. This what they call a base salary, and on top of that they have got overtime and also this is dated back to last October.

Commr. PATTERSON. They could not get less; they might get more.

Mr. WHITTLESEY. They can't get this, Your Honor.

Capt. DAVIS. We are going to put in another exhibit which will show on the basis of a smaller sample the average gross earnings, which of course in view of the overtime pay is somewhat larger, but it has been impractical to get the exact figures for the
130 whole War Department and that is why we are putting in this exhibit as showing the general distribution.

Mr. WHITTLESEY. I ask that the exhibit be rejected on the ground that it does not portray what it is supposed to portray and in addition to the fact that it is certainly irrelevant to this proceeding, because if this proceeding is for the purpose of establishing a rate of fare, then it is immateral whether the passenger draws $1,260 a year or $12,600 a year.

Commr. PATTERSON. We realize all that.

Mr. PRETTYMAN. I have an additional objection. It seems that the exhibit shows base salary when everybody knows that that is not actual salary, and it is put in here for an argument, and that these people can not pay these fares and we ought to have an honest showing of what these people get.

Commr. PATTERSON. Are you admitting that what they get, whatever it is, should be a basis for fixing fares? What are you doing so much fussing about this for?

Mr. PRETTYMAN. It is immaterial anyhow. I join in that objection. It has nothing to do with the case anyhow, but at least it ought to be a statement of what it purports to be. I do object on the ground it is immaterial.

Mr. QUIRK. I made the first objection. Have you ruled on the objection?

131 Mr. HILL: I would like to ask a question before you do.

By Mr. HILL:

Q. Is this for the entire War Department or for the Pentagon Building or for what?

A. It is for the Departmental Service in Washington, which includes the Pentagon Building.

Q. And it includes a lot of other buildings that are not in Virginia, does it not?

A. That is perfectly true, but it is not the entire War Department; it is 4 per cent of the entire War Department.

By Mr. PRETTYMAN:

Q. This is civilian employees only?

A. That is true.

By Mr. HILL:

Q. You said these are just civilian employees?

A. Yes, sir.

Q. Now, what percentage of the entire War Department employees are employed in the Pentagon Building?

A. May I make one preliminary statement?

When you speak of the entire War Department, of course we are taking that that is at least a national organization, as far as Washington is concerned, only approximately 5 per cent of the War Department is located here; I assume that you are limiting it to that 5 per cent.

Q. I am restricting it to the metropolitan area of Maryland, the District of Columbia, and Virginia.

Now, what proportion of the War Department employees
132 are employed at the Pentagon?

A. Well, now, we have direct evidence in the later exhibit on that, I think that I could answer it more directly in view of the later exhibit.

Q. As far as this exhibit is concerned, there is nothing to show how many employees in the C. A. F. 1, 2, 3, and so forth are at the Pentagon or the Army Air Force office.

A. That is right.

Col. BARRON: That will be shown by a succeeding exhibit.

Exam. MATTINGLY. This is the entire governmental service?

The WITNESS. No; the War Department only; the departmental service in the District of Columbia and surrounding area.

Mr. WHITTLESEY. May I interpose this thought, Mr. Commissioner, that if they are going to produce the exact figures as to the exact number of people in C. A. F. 1, 2, 3, 4, and on down the line, then we don't need these percentages, because after we get the exact figures we will be glad to compute the percentages.

Col. BARRON. I am sorry that we have not prepared our case exactly as you have wanted it; but we have done the best we can, with our limited facilities, and this is a common sense
133 proposition. The exhibit shows on its face what it is, and we have tried to show the number of people drawing basic salary of so much.

Of course I think it is of interest to the Commission for two or three reasons, mainly the effect of a very high charge on trans-

portation of people without very much money, without very much income, and we are just trying to show you about how many we have got of our total number within these different classifications in this one exhibit. As far as specific figures are concerned on the number and things of that sort, we have other exhibits to offer.

I think that the thing is very pertinent to the public interest and I think the Secretaries of War and Navy have a very definite interest in trying to get rates established that the personnel of their departments can afford to pay and I think that this Commission has a very high responsibility in that.

Commr. PATTERSON. The exhibit will be accepted. I don't see that it is very valuable either one way or the other, but as long as it has been properly explained, it shows the number of people employed, civilians employed by the War Department in the metropolitan area, in each group and that is all that it is intended to show.

Mr. LANE. It does not show the number at all.

Commr. PATTERSON. It shows the percentage.

. . . Mr. LANE. Not as far as anything to do with this hearing
134 is concerned. As I understand the testimony it is purely and simply the War Department as a whole.

The WITNESS. Not quite; the departmental service as a whole.

Mr. LANE. Of which 5 per cent is located in this area.

The WITNESS. No; the 5 percent is what constitutes approximately 5 per cent, the departmental service.

Capt. DAVIS. This is a typical cross section.

Mr. LANE. This shows percentages, and not number.

Commr. PATTERSON. The percent of 5 per cent.

Capt. DAVIS. I think the Commission can take notice that by and large the employees in one government building will be similar in character to those in others.

(War-Navy Exhibit 21, Witness Franklin, received in evidence.)

By Capt. DAVIS:

Q. I now hand you, Dr. Franklin, a tabulation which I will ask to have marked as War-Navy Exhibit No. 22.

(Tabulation marked "War-Navy Exhibit 22" for identification.)

This is captioned:

"Table XI. Average Net Amount of Pay Checks at Various Salary Levels (Based on Sample of 184 Cases)"

Was this table prepared under your supervision, Dr. Franklin?

135 A. Yes, sir.

Q. Will you explain in general what it shows?

A. The primary purpose of table 11, is that showing what is ordinarily referred to as the take-away salary, as the amount

of money which the employee actually receives, after all preliminary deductions have been made.

The column on the left indicates the salary range which is similar to the preceding table.

Q. That is the base salary?

A. That is the base salary again. As I say, it is similar to the salary referred to in the preceding exhibit, the size of the salary for each group and then in the third column, if you have the table, we have the gross earnings, that is the base salary or if you want to distinguish it there, the base salary may be the beginning of the level or may be somewhere in between. W used actual salary figures directly from the pay roll in this table, plus the ovrtime referred to previously.

That is twice a month.

Q. This gross earnings is twice a month?

A. Yes, sir; for a normal 15-day period plus overtime.

Q. So that the overtime is included in the gross earnings here?

A. That is true.

Q. And any excess over the base salary by reason of the
136 within-grade promotions is also included, is it not?

A. That is true. This is the actual pay-roll amount, as if a person listed a base salary of $1,260, and was receiving $1,300, it is based on the $1,300, the actual pay-roll figure.

The following four columns give the detailed deductions.

One of these which we felt might be open to question, insofar as being a fair sampling, was that of war bonds, so a special investigation was carried on and I have entered that in a footnote which I think that I will read [reading]:

"The War Bond deductions shown in this table (based on the first half of July) constitute 5.25 per cent of the total pay roll. The most recent available figures for the War Department in the Metropolitan District of Columbia are for the month ending June 30. They show that War Bond deductions averaged 5 per cent of the total pay roll. This would seem to indicate that the sample group on which this table is based is fairly typical of the total group of which it is a part."

The total deductions are given, I think that I said, for three columns, and then the last column is what I referred to earlier as the take-away amount, of the net amount
137 of the pay roll. That is received twice a month.

By Mr. Davis:

Q. Now, you handle a large number of statistics for the War Department, do you not?

A. That is true.

Q. You are familiar with sampling procedures, are you not?

A. Yes, sir.

Q. In your opinion is this sample shown in the War Department Exhibit No. 22 a representative sample of the War Department employees for this purpose?

A. I should be willing to state that it is. It is quite a small sample but it was chosen in such a way that it should be a random sample. It was chosen directly from pay roll records and pay roll cards and our one check on the war bond item would tend to show that it is a representative sampling.

I might say that the percentage of the total war bond deductions was increasing at about the rate of 0.3 of a percent per month, so that if we assumed 5 per cent for June, and the same rate goes on, that would be about 5.3 for the end of July, which would indicate that 5.25 would be pretty close to what would be expected for the total group.

Q. So far as the gross earnings and the deductions are concerned, you believe that this is a pretty representative sample?

138 A. That is right.

Capt. DAVIS. I ask that this exhibit be admitted in evidence.

Mr. QUIRK. I object on the ground it is irrelavant and immaterial.

Mr. LANE. I join in that.

Commr. PATTERSON. It is overruled. I don't see any harm in letting that in.

By Mr. PRETTYMAN:

Q. How many employees are at the Pentagon Building?

A. At the Pentagon, we have another exhibit giving a direct answer to that.

Capt. DAVIS. About 30,000. That is in an exhibit that is already in the record.

The WITNESS. That includes military personnel. It is somewhat less than that for civilian personnel. It would be twenty-odd thousand, if you want to limit it to this.

By Mr. PRETTYMAN:

Q. I was just wondering what percentage the 184 cases was of the number of people over there. It is considerably less than one percent.

A. It would be a very low percentage.

By Mr. WHITTLESEY:

Q. May I ask you, were these 184 people working at the Pentagon Building?

A. Yes; of course, the pay rolls were selected entirely from the Pentagon.

139 By Mr. PRETTYMAN:

Q. Were they selected samples or just taken blindly from the list?

A. I withdraw that word, "blindly" would be better. They were taken from a group and within those samples if you care to go into it, every fifth case was taken.

By Capt. DAVIS:

Q. You took a particular office that was convenient; didn't you?

A. We took the pay rolls that could be reached most easily on the day that we carried on the study out of the whole mass and within that every fifth case was taken as a part of the sample.

By Mr. WHITTLESEY:

Q. While we are on that subject, Doctor, as a matter of fact you took 41 examples out of 184 or roughly 23 percent as showing those persons who are classified in C. A. F. 1, isn't that a fact?

A. We of course did not take any examples of C. A. F. 1, we took certain pay rolls and then took every fifth case and let the axe fall where it would. We did not attempt to secure a definite amount of any one pay level.

Q. How did you arrive at those particular pay rolls that you chose?

A. I should say almost entirely by random procedure.

Q. And it just so happened that you picked up a pay roll that was principally composed of C. A. F. 1's and 2's?

140 A. Well, if you will look at this other table, you will see that the War Department is principally composed of CAF 1's and 2's so that it would be very difficult to get a sample that would not hold that.

Q. That is what prompted my question. I did not want to cross-examine you at this time; forgive me for asking you that question, but I notice that you have 1 per cent of CAF 1's as working in the departmental service but over here we are showing the take-home pay, you manage to arrive at 23 per cent of the people that you picked as being in the one per cent of the total departmental service, and I wonder how you arrived at that?

A. I would have to object to that, because I don't think that that would be quite true, CAF–1.

Q. That is one per cent; isn't that correct?

A. That is the $1,260 group.

Q. Yes; that is what I mean.

A. I answered a moment ago, that you were combining, when you said 41 cases, there are as many $1,260's as there are $1,200's.

Now, if I get this correct, under the previous exhibit, NCP–2 is also the $1,200 base salary, and it just happens, that is the only

point, it just happened in the sample there were more NCP-2's than the other group. That is just chance but that is part of the story.

Q. I wanted to find out how you arrived at the figures.

141 A. That is right.

By Mr. QUIRK:

Q. Do you think that these bus fares ought to go up and down with the withholding taxes and other salaries of these employees?

Col. BARRON. This witness is not put on for any such question as that.

Commr. PATTERSON. That objection is sustained. There is no use cluttering the record with a lot of foolish questions of that kind.

Col. BARRON. He is a statistician and analyst and that is all that he is put there for.

Mr. HILL. I would like to move that Exhibit 22 be stricken from the record because what is sauce for the goose is sauce for the gander and if it is foolish for us to ask whether fares should be based on income and withholding tariffs and war bonds, it is foolish for the record to go into the exhibit.

Commr. PATTERSON. Overruled.

Col. BARRON. The remark is utterly pointless. I don't see any relevancy to anything.

By Capt. DAVIS:

Q. I will show you a document which I will ask to have marked for identification as War and Navy Department Exhibit No. 23, which is captioned:

"Table XII. Relationship Between Location of Work

142 and Separations Rate Among Civilian Personnel, May 1943. Departmental Service."

Was this table prepared under your supervision?

A. Yes, sir.

(Tabulation marked "War-Navy Exhibit 23" for identification.)

Q. This table shows, does it not, the rate of turn-over at the Air Force Annex and the Pentagon and the accessible locations in the District?

A. It shows separations—perhaps we should distinguish.

Q. Well, separations.

A. I mean technically, the turn-over includes exemptions as well; this is limited entirely to separations.

Q. These are people who leave the War Department service?

A. That is right.

Q. Will you explain a little more how this table was made up?

A. I might say in passing that for the entire departmental service of the War Department, a separation report is received once a

month. All of these rates are monthly rates, calculated in accordance with the formula standardized by the Bureau of Labor Statistics.

The specific groups are the backbone of this exhibit. The personnel at Gravelly Point are studied separately, those at the Pentagon separately, and for comparative purposes those
143 at the various buildings in accessible locations in the District of Columbia, the Munitions Building beig a good example of that.

You will note that the separations rate which I described briefly a moment ago is given for each of these and this is based on the War Department report for May of 1943.

The average separations rate among civilian personnel at Gravelly Point is 6.75 per cent.

That at the Pentagon is 4.46 per cent.

While at these other buildings grouped together within the District of Columbia it is 3.26 per cent.

Before I go ahead, we also grouped Gravelly Point and Pentagon together so that we could get a nearby Virginia figure and you will see that that comes out to 4.70 per cent.

In order that the comparisons may be somewhat more easily understood, we will note that the rate for Gravelly Point is somewhat more than twice that of the rate for the District of Columbia, to be exact 107.1 per cent. In other words, a civilian employee at Gravelly Point during the month of May was more than twice as likely to leave the service as was an employee in the building in Washington, D. C.

The rate for the Pentagon is somewhat more than a third greater than that for Washington, D. C., 36.8 per cent, while the
144 rate for the combined buildings in nearby Virginia is 44.2 per cent.

One exception in the coverage was made, and I have indicated that in a footnote. One of the constituent parts of the War Department, The Adjutant General's office, happens to be almost equally divided between the Pentagon Building and the buildings in the District of Columbia. The reporting system is of such a nature that to give us just one figure, so that there was no way to break that down. Hence it is omitted. Other than that the coverage is complete within the defined limits.

By Capt. DAVIS:

Q. I notice that Group "C" is captioned "Accessible Locations within the District." You took the Munitions Building and the other buildings which were reasonably centrally located but excluded anything very exceptional, two or three of those small buildings, which are exceptional?

A. Yes, sir.

Q. But this includes the greater bulk of those within the District?

A. That is true.

Capt. DAVIS. We offer this exhibit in evidence.

Mr. PRETTYMAN. I object to it on the ground it is immaterial.

Mr. QUIRK. Objection.

Mr. WHITTLESEY. Could I ask you a question?

145 Commr. PATTERSON. You may.

By Mr. WHITTLESEY:

Q. What do you mean by the use of the word "separations?"

A. There is one clear-cut definition that we are using there, that is actual elimination of the individual from the War Department.

Q. Does that include those who are discharged?

A. Yes, sir.

Q. And those who quit?

A. That is right.

Q. And those who transfer to another government department?

A. Outside of the War Department, that is true. Not transfers within the Department, no, but if a person would transfer from the War Department and to the Treasury Department, for example, he would be a separation as far as the War Department is concerned.

Q. Those inducted into the armed services?

A. Surely.

Q. Now, what do you mean by the words "accessible locations in the District of Columbia?" Do you have any inaccessible locations; that is what I am trying to get at?

A. We brought that out. There are three cases, I believe, the Quartermaster Corps is one example, far in the Southwest, where there are certain special problems, and we have figures

146 on that, but we did not feel that it was typical of the D. C. picture, and that is the reason.

By Mr. DAVIS:

Q. They have different kinds of employees?

A. That is a specialized group and there is a third group that has about 30 employees which is too small to worry about. The other group of any size is the Finance Department, which is also highly specialized.

By Mr. WHITTLESEY:

Q. The separation reports, then, I understand, contain reasons, do they not, as to why those particular individuals separated from the service?

A. I have been analyzing those for 11 months and I am afraid that I can't quite agree. They contain reasons why they say they separated and there seems to be no connection, I am sorry to say.

Q. Just one moment; are you challenging the validity or veracity of the data upon which this exhibit is predicated?

A. I don't think so. I would be glad to explain that. There are two quite distinct reports. There is one report which the War Department demands and turns in to no other department and that is what this is based on, and then we have a civil service analysis of the reasons given by individuals.

Now, when you say, Does that report contain, I assume that you mean, maybe I am not quite fair, do we have data on reasons.

147 We have two reports, one of which is an analysis of expressed reasons of individuals and the other is an actual statistical report of separations.

Q. You have a tabulation, I grant you that, but back of that tabulation isn't it a fact that you have a separation report which shows the exact reasons why those individuals are being separated from the service?

A. All that we have is a statement of any reason that might have been given at what we call an "exit interview."

Q. That is what I am talking about.

A. The fact that the individual separates, but the fact that he says that he left for reason A or B, I have no means of checking that.

Q. Well, Doctor, wouldn't you assume that the man would give the reason why he was leaving or not?

A. Well, I don't see statistically why we need to make such an assumption.

Q. I am merely asking, Doctor, to determine the background of this analysis.

A. This analysis is restricted entirely to those direct statistical reports of separations.

Q. But you do have the separation reports which provide a statement as to the reasons why people left?

A. Anything that may be given in an exit interview.

By Mr. DUNLOP:

Q. But you ignore that.

148 A. We did not even analyze that for this purpose, not touching upon it, I assume is ignoring it.

By Mr. WHITTLESEY:

Q. Now, the next question, if you were wishing to arrive at percentages to show separations from the departmental service, you would not take into consideration the reasons why they separated you would merely take everybody, whether they quit or transferred or were discharged or anything else, and lump them into that group?

A. Would you mind repeating the first part?

Q. All I said was that when you were arriving at a percentage of separations, the reasons for the separations have no significance in your mind whatsoever?

A. Not in determining the percentage of separations; that is a matter of fact.

Q. Now, you also, or referring now to this note, in the Adjutant General's office, you do have data, do you not, showing the type and character and the classification of the employees in each of these buildings, at the Adjutant General's office?

A. Describing the individuals?

Q. Yes.

A. That would be available; it could be secured.

Q. And you have those split as between an accessible location in the District of Columbia, and the Pentagon Building?

149 A. I am sorry; I am not sure.

Q. Do you have those employees split?

A. Yes, I thought that you were referring to the records, that is in the location now, am I clear there?

Q. As to the location, that is true.

A. The only reason for not using these, I will say first of all that we had to go back in past records, and the records had already been submitted to the Adjutant General's office, as one over-all total.

Q. Is this a weighted average?

A. Which one?

Q. These figures that you have on there; are they weighted averages?

A. I don't see any averages, I am sorry.

Q. The weighted percentages?

A. Of course, technically it might take a while, these are calculated in accordance with the standard separation formula, used by the Bureau of Labor Statistics. It is not precisely an average. I would be glad to go into that.

Capt. DAVIS. It is a percentage which those separated bear to the total number of employes.

The WITNESS. I would be glad to quote the formula.

Mr. PRETTYMAN. It is the weighted average when? The end of the month or when?

The WITNESS. The number of separations, times 100,

150 just to get it on a percentage basis, divided by the number of employees at the end of the month, minus the number at the beginning, over two—that is one-half, in order to get the average. That is, put it in more common-sense terms, it is the number of people who separated divided by the average num-

ber of people employed, and the 100 factor is simply reducing it to percentage.

Mr. WHITTLESEY. May I ask then that you reserve a ruling on this exhibit, at least, because it is obviously a preliminary to some other exhibit that he intends to put in and they will stand or fall together.

Commr. PATTERSON. It will be identified as Exhibit 23.

(Tabulation marked "War-Navy Exhibit 23" for identification.)

MR. PRETTYMAN: I wanted to ask one or two questions of this witness, if Your Honor please. That is, not prior to the ruling on the exhibit but by way of prior cross-examination.

Commr. PATTERSON. You may proceed.

Capt. DAVIS. If your Honor please, these were all of the exhibits that we contemplated having Dr. Franklin put in. Of course it is a lot of work and while naturally the War Department has information of every individual employee it is a tremendous amount of work to compile information on 30,000 employ-
151 ees, and we believe that this is sufficient for the purpose, so we are content to rest on these tables as they have been submitted.

Col. BARRON: If the Commission wants more on any point we would be glad to supply it. It would be just a matter of a very few hours.

Mr. LANE. As I understand, that rests as far as Dr. Franklin is concerned.

Capt. DAVIS: We are through with Dr. Franklin, and we would like to have him cross-examined now if it is practicable to do so. There are only these three exhibits.

Commr. PATTERSON. Do you want to analyze these exhibits a little more before you cross-examine or are you ready now?

Mr. PRETTYMAN. I have one or two questions that I would like to get out of the way and I would like to reserve the rest.

Cross-examination by Mr. PRETTYMAN:

Q. Now, Dr. Franklin, you said that there were some locations excluded from Group C. Will you make an exact statement of what locations they were?

A. The Quartermaster Corps, in the temporary building in the Southwest, near Buzzards Point is one, and the Finance Office. I am not sure I can give you all of them; it is divided into three parts. The only additional exception was the office of the National Guard, and if I recall correctly, there were fewer than 30 employees.

152 Q. How many civilian employees are there down at the Quartermaster Corps?

A. I don't know whether I can quote that exactly. I am sorry. I will have to check.

Capt. DAVIS. In the aggregate those were very small in proportion to the total in Group C.

The WITNESS. Yes, sir; the total is quite small, but that is quite available. I am sorry that I don't have it.

By Mr. PRETTYMAN:

Q. What was the rate of separation of that group?

A. Again I don't have the exact rate here. It is relatively higher. It has been, and so is Finance.

Q. Well, would you supply us with the rate of separation on the Quartermaster and on Finance?

A. I will be glad to do that.

Q. Now, one more question. Do these named services under Group C include all of the civilian employees of the War Department in what you call accessible locations of the District of Columbia?

A. This list in the exhibit, the three lists combined, plus the three that I have mentioned, Quartermaster, Finance, and National Guard, constitute the entire department service.

Q. And you will let us have the rate of separation for
153 the Quartermaster Corps and for Finance?

A. I will be glad to do that.

Mr. PRETTYMAN. I would like to reserve further cross-examination.

Cross-examination by Mr. WHITTLESEY:

Q. I would like to ask one further question.

Do you have in your office, Doctor, as I understand you are in the Office of the Secretary of War, then under your control and in your custody, are those records which contain the reasons for the separations of the various individuals who sign these exit slips, isn't that correct?

A. Insofar as they have been reported centrally, that is true.

Q. And they have been reported, have they not, for May of 1943?

A. That is true.

Q. To your office?

A. That is true, insofar as they have been reported.

Q. Now, will you have those available for inspection?

Capt. DAVIS. If the Commission please, I think that that places an unreasonable burden on us to have to supply 30,000 reports and go on over those. He has given the aggregate figures and we believe that that is sufficient for this purpose.

154 Mr. PRETTYMAN. Counsel does not mean 30,000.

The WITNESS. It is approximately 40,000.

By Mr. WHITTLESEY:

Q. I want the separation sheets for the month of May.

A. The individual records are retained.

Mr. WHITTLESEY. He says that he has them in his records.

The WITNESS. The summaries come to me.

By Mr. WHITTLESEY:

Q. They prepare you a summary showing you catalogued reasons as to the separations, do they not?

A. That is true, insofar as they were prepared, they are in my office.

Q. So that you will have a list for the month of May of 1943, from the Inspector General's office, and I use this as an example, 25 people separated, four of them separated for such and such a reason, and 21 of them separated for thus and such a reason.

A. Insofar as that is available, I have it.

I should make one statement: The reasons in many cases are not secured at all. I mean they are unknown; they are not absolutely obligated to present the reasons.

Q. The tabulation will show that they are unknown?

A. They are not given, that is correct.

Col. BARRON. We are perfectly willing to produce such
155 a summary of those reports from the Office of the Secretary.

Of course we can't produce names, that is confidential, and we can produce a breakdown as between reasons given, those who don't give reasons and the various classifications.

The WITNESS. May I answer one question: You may be interested in the reasons given by those who are at Gravelly Point as compared to the other groups.

Mr. WHITTLESEY. In other words, I want what is back of this 4.46 per cent and 3.26 per cent.

The WITNESS. In so far as the records are available, I have them.

Exam. MATTINGLY. That is understood, that that will be supplied.

Col. BARRON. Yes.

Cross examination by Mr. LANE:

Q. What were the total separations from the War Department of the metropolitan area for the month of May?

A. What is that?

Q. What were the total separations?

A. It is in Table 5 in that publication.

Q. Well, you don't know offhand?

A. I would have to recall. I have been working with about six other months, so I don't know. I can give it to you in per cent, though. I should think it is about 5.3 per cent.

156 Q. Numerically?

A. No, I would have to check back on the figures there. I don't attempt to retain those.

Q. Did you analyze the severance causes given at exit interviews of the various employees who did separate during the month of May?

A. Only to the extent of a published report, where we have a table with this list of reasons.

Q. With 25 reasons on it?

A. Yes, the report published is a complete analysis in which we are engaged today.

Q. Well, in your Exhibit No. 23, it is not intended to infer as to what—as to the reason for which any of these people separated from the buildings, is it?

A. All we are doing is presenting these figures, showing the rate for each of the three groups.

Q. That table, or that Exhibit No. 23 was prepared under your direction?

A. Yes, sir.

Q. On August 27?

A. It was completed on that date.

Q. Have you prepared a previous table with slightly different breakdowns on the same month?

A. I think that we have actually prepared a series of tables.

157 Q. You prepared this Exhibit No. 23 particularly for this case, did you not?

A. Yes, that is true.

Q. Had you prepared a similar exhibit under date of July 31, 1943, for this case?

A. I don't recall the date. We have one exhibit wherein we had the inaccessible D. C. items which we have discussed and wherein we had not secured enough data to distinguish between Gravelly Point and the Pentagon, which came in later.

Q. If you took the percentages of the Gravelly Point group in Exhibit 23, and the Group B, Pentagon, in Exhibit 23, and added them together, your severance rate for both groups would be approximately five point something, wouldn't it?

A. I don't quite understand. I mean there it would be a weighted average if you wanted to add them together, because we have only some 3,000 employees at Gravelly Point and a much larger number at the Pentagon so that you could not just add them and get a figure that would mean anything.

Q. What was the objection that you had to the exhibit that you had prepared on July 31, 1943?

Capt. DAVIS. If the Commission please, I don't quite see how that is relevant.

What exhibit are you referring to?

Mr. LANE. I will show to the witness a copy of a statement
158 delivered to me by the War Department, bearing on this question, which I presume is correct, as it came from the Bureau of Research and Policy Branch.

Capt. DAVIS. Are you offering this in evidence?

Mr. LANE. I am letting the witness examine it.

Capt. DAVIS. If this is going to be discussed we should have it in the record.

Mr. LANE. I have not offered it in evidence at all.

Capt. DAVIS. It should not be discussed.

By Mr. LANE:

Q. Do you recognize that document?

Capt. DAVIS. If the Commission please, I believe that there should be a ruling on that objection, sir.

Commr. PATTERSON. Let the witness answer the question. If there have been four or five of these statements prepared, we will have the benefit of them.

Capt. DAVIS. We are glad to have them in, but I do believe it should be done in an orderly way.

Mr. LANE. It is perfectly possible in cross-examination to ask a witness if he can identify a document, if it was prepared under his direction, the War Department certainly cannot object to that.

Capt. DAVIS. Not at all.

Mr. LANE. That is all that I am asking the witness.

Do you recognize it?

The WITNESS. Yes.

159 Capt. DAVIS. The record will be meaningless, if it is not offered at least for identification, so that the parties can see what it is.

By Mr. LANE:

Q. How do you reconcile the rates of separation average rates?

Commr. PATTERSON. Just a minute. Had you answered the question, do you recognize the document?

The WITNESS. Yes.

Mr. LANE. May we offer it for identification?

By Mr. LANE:

Q. What is that document that I have handed you, Dr. Franklin?

A. You mean a description of it?

Q. Yes.

A. That is a preliminary analysis of essentially the same data. The only item not included in the exhibit offered is that of the inaccessible locations which we have been discussing, as I believe

I mentioned a moment ago; at the time that this document which you offered for identification was prepared we did not have sufficient data immediately at hand to distinguish between Gravelly Point and the Pentagon, and we had to work back over the data.

Q. Can you reconcile the figures in the document that I have just handed you, with the figures contained in your Exhibit No. 23?

Exam. MATTINGLY. We don't even know what the figures are, if you are going to put in those figures——

160 Mr. LANE. Pardon me; I quite agree with you.

Will the witness please read the document into the record?

Capt. DAVIS. Are you offering this document, Mr. Lane?

Col. BARRON. We have a casual interest in it. I don't know what it is.

Exam. PATTERSON. Let Col. Barron see it and it may be that the War Department will be willing to offer that as their exhibit.

Col. BARRON. If it has any bearing at all we will be delighted to.

161 Col. BARRON. We have no objection to the Exhibit being put in evidence, it is just a part of the preliminary studies that were made and this is not a final computation, and does not enter into the final figures. We are not vouching for this.

Capt. DAVIS. I presume that Mr. Lane desires to have it explained, and we are perfectly happy to have it explained.

Mr. LANE. For the purpose of testing the credibility of the witness I believe that it is permissible that the witness read it into the record. The figures manifestly are different from those in the Exhibit offered by the witness yet it purports to be a résumé of similar tabulations.

Col. BARRON. May I ask counsel where he got that particular document.

Mr. LANE. I do not think that that is material, counsel. I testified to it, however, I offered it to your witness, he has identified it.

Col. BARRON. That was in our files here, I have a distinct recollection of a similar paper in a folder here in front of me.

Commr. PATTERSON. I think in order to examine intelligently it should be put in as an exhibit in the record.

Col. BARRON. We are perfectly willing for it to be in.

Mr. LANE. Outside of this particular point as to the relevancy of Exhibit No. 23, we will be glad to introduce it

162 into evidence but for another purpose.

Commr. PATTERSON. Yes, I think it should be done that way, if you are going to make comparisons.

Mr. LANE. Marked for identification as an exhibit, for that purpose only, we are not willing to vouch for it at all.

Capt. DAVIS. I do not think that——

Mr. LANE (interposing). It is a record similar to the one introduced by this witness, prepared under his direction and he has generally identified it. I believe it is proper and should go into the record.

Col. BARRON. As I understand it, it was some of our figures that were not, we are not vouching for it, if you want to vouch for them that is up to you.

Mr. LANE. It has been identified by your witness.

Mr. QUIRK. The point is that this witness has——

Comm'r. PATTERSON. Mark it and then have your witness introduce it.

Mr. QUIRK (continuing). Mr. Examiner, there has been so much conversion about this, I ought to be allowed to talk.

Exam. MATTINGLY. Well, all right.

Mr. QUIRK. It is nothing unusual to confront a witness with a document different from the one that he has now introduced
163 in order to reflect on the credibility of the thing. That is all Mr. Lane is doing, there is nothing improper about that.

Exam. MATTINGLY. Do you want to make Mr. Franklin your witness to introduce that and have copies available to be furnished to the other parties?

Col. BARRON. I recognize it as similar to paper in our files and I would just like to know where the dickens they got it. I recognize it as similar to a paper we had.

Mr. LANE. I do not see why we should be forced to introduce into the record by our witness a computation which was not prepared by us or by the witness at our direction.

Exam. MATTINGLY. You want it in the record, do you not?

Mr. LANE. We want it in the record for the purpose of testing the credibility of this witness and I think we are entitled to introduce it through this witness, as he has identified it as being prepared under his direction.

Exam. MATTINGLY. Well, go ahead.

Mr. LANE. We offer it and will give copies, we will have copies made. May it be admitted at this time, he is not our witness.

Dr. Franklin, have you any idea of the number of witnesses, or rather, pardon me, have you any idea of the number of employees separated from the War Department during the month of May who gave transportation as their reason for their separation?

164 The WITNESS. This tabulation was made under my direction and I read it and checked it for accuracy, but we have
25 different reasons and I make no effort to memorize them.

Mr. LANE. Well, you have never given any study to that particular question in regard to any other statistics which you have prepared.

The WITNESS. May I be sure that I understand your question? You asked me if I have ever given any particular effort to determine how many people have separated, in separating have said in their separation that it was due to transportation difficulties.

Mr. LANE. Correct.

The WITNESS. That is true, and neither have I given any study to any of the other reasons. Here again we have not reached the point of analysis——

Exam. MATTINGLY. Aren't you going to furnish certain figures?

The WITNESS. We have agreed to provide the figures which have been asked for.

Capt. DAVIS. We have witnesses who have investigated the various causes of separation, they will come along later. We do not intend to put that in with this witness.

Mr. LANE. Well, do I take it, Dr. Franklin, that you have no faith in the reasons which appeared in the reports published by the War Department monthly under your direction?

165 The WITNESS. As a statistician I do not think that I am concerned about faith. We are simply reporting the facts as we get them. We are giving the tabulated reasons.

Capt. DAVIS. This is a matter of no concern to this witness and on which he has not qualified as an expert.

Mr. HILL. I wonder, Mr. Commissioner, if the witness may not be used to explain how, without the assistance of counsel, just what he does or does not know.

Col. BARRON. What was that remark?

Mr. HILL. I would be glad to repeat it.

Mr. LANE. Who conducts the severance examinations?

The WITNESS. Counselors, I understand, although I have no direct control over that and the figures come to me only for the report and the assembling of the report.

Mr. LANE. They furnish to you the various facts which are involved into or assembled into the various reports which you publish, is that correct?

The WITNESS. All that I receive in that connection is a very brief summary.

Mr. LANE. Well, you have no reason, Dr. Franklin, to doubt the figures as compared by you, the reasons given from those handed you and the computations made for you.

The WITNESS. Not any doubt about their being what they purport to be.

Mr. LANE. That is all I want to know. It would not
166 surprise you to know that—I will withdraw that question.

Capt. DAVIS. If they are through with cross-examination I have some questions for the doctor.

Mr. PRETTYMAN. May I have just a moment?

(Short interruption.)

Commr. PATTERSON. You may proceed.

Mr. PRETTYMAN. I will reserve my further cross-examination.

Mr. LANE. No more.

Commr. PATTERSON. Do you have some redirect?

Capt. DAVIS. Yes.

Redirect examination by Capt. DAVIS:

Q. They started, Doctor, to ask you to explain why that exhibit you have introduced was prepared and the purpose of it. I wish you would go ahead and explain it further.

The WITNESS. To the best of my knowledge that was just a preliminary analysis; more data came in and we modified it.

If I may, I would like to compare these figures. I do not think I had a chance to answer the statements that the figures were not consistent. Group A, of Virginia, in the first report had a severance rate of 4.7 per cent; in the exhibit today the percentage is 4.70. We simply calculated it in the first case to tenths and in the second exhibit in hundredths.

167 The accessible locations in the District is 3.3 per cent and in the actual report is 3.26; we made a rush report the first time and calculated it to the nearest tenth, and now we had more data and we calculated it to the hundredths.

Mr. HILL. Where is that?

The WITNESS. The figures, however, are precisely the same.

By Capt. DAVIS:

Q. Now, the other changes you made were in separating the Gravelly Point from the Pentagon and accessible and those inaccessible locations in the District, and are they not typical of the general situation in the District?

A. We had very good evidence on the part of finance and the quartermaster that there were a number of special factors which worked. However, the figures are available for what they are worth.

Capt. DAVIS. We have no other questions.

Re-cross-examination by Mr. LANE:

Q. I would like to know just one thing, if the Commission please: how did you arrive at the word "accessible" and what were the factors which made a place inaccessible?

A. Negatively, I am not sure where those were selected, but to a particular degree according to reports, to the best of my knowledge.

Q. Whose reports?

A. I have no official report, just the general information.

168 Q. Did you use the phraseology accessible and inaccessible in preparing this exhibit?

A. Did I use it?

Q. Is it your phraseology?

A. It is used. I do not admit to creating it.

Q. You wrote the report?

A. I did; I wrote the report.

Q. Accessible locations.

A. I admit that I wrote the report.

Q. Who determined the accessibility of those locations? By what standard did you determine that?

A. I do not have any additional information on that.

Q. Well, you haven't given any, Doctor.

A. I said purely negatively.

Col. BARRON. I think we can clear that up by a few simple questions if counsel would yield. Do you know where the National Guard Armory is way down here southwest, several miles from the Munitions Building, do you know where that is located?

Mr. HILL. Well, where, do you know where it is?

Col. BARRON. It is several miles from Arlington.

Mr. PRETTYMAN. I do not see why counsel should take the witness and answer the questions for him.

Col. BARRON. Do you know where it is located?

Mr. LANE: If you will excuse me, Mr. Examiner, I asked

169 the witness——

Col. BARRON. If you will excuse me, I had the Commissioner's permission to ask these questions.

Commr. PATTERSON. Go ahead and ask your questions and see if we can fix these places.

Col. BARRON. All right.

Do you know where these locations are, first of all the National Guard Armory?

The WITNESS. I am not sure that I can quote it, we had it in a table worked out.

Col. BARRON. You do not know that that is where the Quartermaster Force is located in the Southwest?

The WITNESS. At Buzzard Point, I believe.

Col BARRON. You know that in the War Department it has been customary for a long time to refer to those installations as in common usage as inaccessible in comparison with the others.

The WITNESS. Yes; that is the way in which we used that term in the report. Customary usage probably would have been a better term.

Mr. LANE. Well, take Buzzard Point, what is it that makes it accessible and inaccessible, to whom, and why?

The WITNESS. In general we term the downtown area, the installations for the most part within a reasonably restricted area.

170 Mr. LANE. Well, do you mean it is inaccessible to somebody who lives in the extreme Northwestern section, or what do you mean?

The WITNESS. Somebody who lives in the Southeastern part of Washington.

Mr. LANE. Do you mean accessible to somebody who lives in the Southwest, and inaccessible to someone who lives in the extreme Northwest, what is it you mean?

The WITNESS. I do not have a term for it, it is a very general exhibit you see.

Mr. LANE. Well then it might be inaccessible to one group and very accessible to another.

The WITNESS. Some people might live across the street.

Mr. LANE. Or is it inaccessible to the War Department staff housed in the Pentagon Building?

The WITNESS. Pardon?

Mr. LANE. Is it inaccessible to the War Department staff housed in the Pentagon Building?

The WITNESS. Of course we were not concerned with that in preparing the exhibit.

Mr. LANE. We want to know how the phrase grew up, this inaccessible.

The WITNESS. To the best of my knowledge, best of my knowledge and the people employed.

Mr. LANE. Those people down there have transportation.

171 The WITNESS. Obviously.

Mr. LANE. I do not know whether they have or not, do they?

The WITNESS. As far as I know, they [illegible] to work.

Mr. LANE. Do you know that to be true?

The WITNESS. Yes.

Col. BARRON. I object to this line of interrogation as extraneous. I think that undoubtedly the Commission can take notice of where these principal installations are.

Mr. HILL. How is the Commission to know that, I would like to know.

Exam. MATTINGLY. We do not even know what they are or where they are.

Mr. HILL. Nor do I.

Mr. LANE. Neither do we, if the Commission please. Where is Buzzard Point, I do not have any idea where it is, Mr. Examiner.

The WITNESS. I know how to get there, I do not know that I would be a competent geographer as a witness in the location of these particular locations.

Col. BARRON. If they want to know, we will put a witness on the stand who can describe the locations.

Mr. LANE. If the Colonel will just be a little bit patient, I believe we are entitled to discover why a witness uses particu-
172 lar words on an exhibit prepared by him and I think that if the Colonel will just be patient we will discover what those words mean.

Col. BARRON. He has just testified that it is not important. He has testified as to general usage in the War Department in respect of these places, and he said what they are.

Mr. WHITTESEY. May I interpose? Then if counsel's statement is correct, it is not important, let's have that word stricken off the exhibit then.

Col. BARRON. That is immaterial.

Col. WHITTLESEY. I agree with counsel.

Col. BARRON. We are dealing with a lot of extraneous and unimportant matter.

Mr. LANE. May I go back, Doctor Franklin, and ask you again, do you have any reason, any reason based upon any particular set of facts, to use the word accessible or inaccessible on this exhibit?

The WITNESS. I do not know that I have anything to add to what I said previously. As a matter of fact, as I recall we adopted them a considerable time ago, just adopted a label, some sort of a label to get a unified group.

Mr. LANE. And accessible and inaccessible were the two terms that were used.

The WITNESS. I am not sure, but I do know they are rather widely used in the War Department but as to who should
173 get credit for them, I do not know.

Mr. LANE. There are no facts in connection with this exhibit that would justify a distinction between the groups that are labeled accessible locations and inaccessible locations, is that correct?

The WITNESS. I think a map would indicate that these in group E——

Mr. LANE. Of Exhibit.

The WITNESS. Exhibit 23 are in one way very limited area, the others are scattered.

Mr. LANE. Well that does not necessarily mean accessible, does it?

The WITNESS. It would be hard to prove that that is the best label for it.

Commr. PATTERSON. The fact of the matter is that you wanted to refer to a group of points in the District of Columbia and you

had to employ a caption in some way so you put the word accessible in there as in this case.

The WITNESS. Just simply used it, it might have been just as well X and Y.

Mr. PRETTYMAN. And the fact is that you have written in the inaccessible.

The WITNESS. Oh, yes; and we have agreed to furnish information as to finance, National Guard and Quartermaster.

Mr. PRETTYMAN. Those are the ones you left out, is that
174 it?

The WITNESS. I was asked for information in regard to the Quartermaster and finance separately, and I said we could get that.

Mr. PRETTYMAN. As compared with the Munitions Building. Is the Pentagon accessible or inaccessible in your estimation?

The WITNESS. Well, are we leaving those terms, I am willing to call them X and Y.

Col. BARRON. This witness is not put on for this purpose, he is put on for certain purposes and they are very obvious.

Commr. PATTERSON. The witness says the accessible location rate is 3.26; inaccessible location rate is 5.6.

Now, have you that other figure in here, you have it all, and that is all that is necessary.

Col. BARRON. We will be glad to show where all these places are.

Mr. LANE. Well, if the Court please, if the Commission please, the word inaccessible might apply to transportation and therefore any difference in rates might be reflected in here on difficulty of transportation, and I would like very much to clear the record.

What is the rate, Doctor, of the severance for entire civilian personnel of the departmental service for the month of May?

175 The WITNESS. I think it was 5.3.

Mr. LANE. Is that the average of all departments of the United States Government or not?

The WITNESS. The departments in general do not publish that.

Mr. LANE. Has the Civil Service Commission ever supplied you with figures regarding that?

The WITNESS. No.

Mr. LANE. You have never seen any consolation on that average?

The WITNESS. No; as a matter of fact I tried to get such a statement. We initiated that last fall and to the best of my knowledge we were the first to issue that type of compilation.

Mr. LANE. That is all.

Exam. MATTINGLY. That is all, thank you.

(Witness excused.)

Capt. DAVIS. Lieutenant Cone.

Lt. EDWARD D. CONE was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Lieutenant, will you state your name and position for the record?

A. Edward D. Cone, Lieutenant, United States Naval Reserve; I am on duty in the Transportation branch, in the office of
176 the Assistant Secretary of Navy.

Q. And what are your duties, in general?

A. Under Commander Randolph's direction we make investigations and studies of various transportation matters that affect the interest of the Navy Department.

Capt. DAVIS. For convenience we are distributing together, if that is satisfactory to the Commissioner, a set of these exhibits, which I think will expedite it, and I ask that these be marked for identification as War and Navy Department Exhibits 24 to 32, inclusive.

Exam. MATTINGLY. You had better go through then and identify them and put the numbers on them as we go through them so that everybody will get the right number. No. 24, will it be sufficient to say that that is Navy 1?

Capt. DAVIS. I would like Navy 1 to be marked as Exhibit No. 24, Navy III, as Exhibit 26; Navy IV as Exhibit 26; Navy V as Exhibit 27; Navy VI as Exhibit 28; Navy 7 as Exhibit 29; Navy 8 as Exhibit 30; Navy IX as Exhibit 31 and Navy X as Exhibit 32.

(War Department Exhibits 24 to 32 both inclusive, witness Cone, marked for identification.)

By Capt. DAVIS:

Q. Lieutenant Cone, were these various Exhibits which have been marked for identification as War and Navy Department Exhibits 24 to 32, inclusive, prepared under your supervision?

177 A. They were.

Q. Now, will you go through these Exhibits and tell us in general what each one shows, starting with the one identified as Exhibit No. 24, captioned I?

A. Exhibit No. 24 is a summary of bus passengers (one way rides) carried between the District of Columbia, (including Rosslyn and Arlington Farm) and the Navy Annex Building on three separate week days, August 5th, 6th, and 7th, 1943. This figure is the average of the three days, so that the figure in the lower right-hand corner of 5,558 represents the number of one-

way riders handled to and from the Annex in a typical 24-hour week day?

Q. This is based on actual account, is it?

A. Yes, sir; count made on the scene.

Q. And is this period fairly typical as far as you know?

A. I think so; yes, sir.

Exhibit No. 25 is the distribution of passengers according to fare combination used.

The first term, in the first line, first item in the first line "Distribution from Questionnaires" is split up on the apparent riding habits of 3,298 one-way riders, the figure which was provided me, and we applied the percentage distribution between the different fare classifications to the 5,558 from Exhibit 24, and that shows the various numbers of passengers riding in each fare classification.

178 It will make for clarity, at the bottom I think if you will read instead of War Department Chart II, read Exhibit 17, which was previously introduced.

Instead of Navy II and Navy I, if you will read Exhibit 24.

Mr. LANE. Pardon me.

The WITNESS. In the notes at the bottom, three, four, five, and six. Exhibit 24; the first one is Chart No. II, which is Exhibit 17.

Mr. LANE. It is in line 1.

The WITNESS. Yes, sir.

Mr. LANE. All right and the second correction is what?

The WITNESS. Instead of Navy II it should be Exhibit 24.

Mr. LANE. All right.

Exam. MATTINGLY. That is, in lines three, four, five, and six, is that right?

The WITNESS. Yes, sir.

Capt. DAVIS. That was meant to be Navy I, is that right?

The WITNESS. Yes.

Capt. DAVIS. That is, it refers to the figures in the previous exhibit.

The WITNESS. Yes.

Exhibit marked No. 26 corresponds in general with Exhibit No. 18 which was previously introduced, and based
179 on this distribution in Exhibit 25, which shows the apparent daily revenue of the three companies concerned, the A. B. & W., the Arlington and Fairfax who operate directly to the Annex, and the Capital Transit Company who operate connecting service to these other two lines.

Col. BARRON. It was based on the questionnaire, Exhibit No. 26.

The WITNESS. No; this one, No. 26, is based on the calculations which are shown on Exhibit 25.

Col. BARRON. It was based on a questionnaire.

Commr. PATTERSON. I thought that was based on an actual count.

The WITNESS. The first line, 3,298, is based on the questionnaire; the figure 5,558 is based on the actual survey, so that the distribution in different fare groups is based on the percentages given under 3,298.

Capt. DAVIS. In other words, the total was based on the count and the distribution among them based on the questionnaire.

Mr. LANE. May I ask counsel if other counsel may be furnished with copies of the questionnaire used in computing these figures so we may know what the questions were, how they were computed; so far I have seen nothing, nothing has been given us to show what that questionnaire was.

Col. BARRON. We would be glad to give samples of it.

180 Mr. LANE. I think it will save time for everybody.

Col. BARRON. The same questionnaire was used by both the Army and the Navy.

Mr. LANE. Prepared by the War Department.

Col. BARRON. We cooperate with the Navy. How many of them do you want?

Mr. LANE. I think all counsel would want them.

The WITNESS. I might point out, Exhibit 25 is roughly similar to Exhibit 19 that Major Ristroph introduced.

Mr. HILL. All through these Exhibits when you refer to Navy so and so it means the Exhibit number at the top, does it?

The WITNESS. Yes, sir.

Exam. MATTINGLY. Do you want to put the questionnaire in as an exhibit if everybody is agreeable?

Capt. DAVIS. Well, let it come as the last number introduced in this series so it won't throw the other numbers out.

Exam. MATTINGLY. All right, let's give that Exhibit No. 33.

(Exhibit 33, by counsel Lane received in evidence.)

The WITNESS. Exhibit No. 27 is an analysis of the fares based on a proposal that I understand was made by the Transit Com-

181 panies on the 30th of July 1963. The item "ticket (2)" is where they would provide or offered a ticket, twelve trips for $1.60, or an average of 13.33 cents a ride.

Exam. MATTINGLY. Where is that?

The WITNESS. Under proposal, Navy V.

Mr. LANE. Navy what?

The WITNESS. Navy V, ticket (2).

Mr. LANE. Oh, I see.

The WITNESS. Under the word "proposal."

Mr. LANE. Oh, I see.

The WITNESS. This shows the total annual revenue of $256,000 which was from Exhibit 26, and a total annual revenue under this proposal of $212,000, in the lower right-hand corner.

Exhibit No. 28 is a similar break-down based on the tariff of the present district fare, plus 5 cents additional on the connecting lines and the consequent revenue is shown in the lower right-hand corner.

By Capt. DAVIS:

Q. In other words, this would result in a slight reduction in the amount of $45,037.20.

A. Yes, sir.

Exhibit No. 29 is an analysis based on the 10-cent maximum fare and shows the effect on the revenue in the lower right-hand corner again.

Exhibit No. 30 is an analysis based on the tariff of a token at three for 25 cents, or 10 cents cash fare, and shows
182 again the current revenue in the lower right-hand corner.

No. 31 is an analysis based on applying the present tariff for the District of Columbia to all the the tariff carried to the Arlington Annex, and shows the similar effect on receipts. No. 32——

Mr. LANE. Before you go to 32, may I ask what you mean by the——

The WITNESS. All right.

Mr. LANE. Analysis based on the proposed tariff of present District fare, by that you mean what fare, the published?

The WITNESS. That is distributed between, split up between the different forms of fare on the same ratio that we found previously, that people apparently ride habitually or use that fare.

Capt. DAVIS. In other words it contemplates the reduction or assumes the reduction there would be if the District fares were applied to the Navy Annex.

The WITNESS. Yes, sir.

Capt. DAVIS. And the riding habits remained the same.

The WITNESS. Am I going to pass on these?

Capt. DAVIS. No, they will have opportunity to examine further on that.

Mr. HILL. Let me ask you, Lieutenant, on Exhibit 31,
183 in the center, main column, entitled "Estimated Distribution of Fares" for five cents only, that is to cover what transportation?

The WITNESS. That is the present people who now pay five cents, some of whom ride from Roslyn to the Annex; some of whom ride from the Annex to Roslyn; it is the same figure that appears in——

Mr. HILL. Well——

The WITNESS. ——Exhibit 25 under the five-cent flat heading.

Mr. HILL. And this Exhibit then is based on the assumption that that would remain in effect.

The WITNESS. Yes, sir.

Capt. DAVIS. In other words, Lieutenant, those are the people——

Exam. MATTINGLY. The answer to your question is yes—the reporter might not get that nod.

The WITNESS. Yes; we assume in all these calculations that there would be no increase in any class of fare.

Capt. DAVIS. In other words, those people as to the five-cent fare, ride in points in Arlington County show that they do not come from the District.

People who now ride for five cents would continue to ride for five cents.

Mr. HILL. The extent of the use of the pass was de-
184 veloped from the use of the questionnaire.

The WITNESS. The extent of the use of the pass was the figure that Major Ristroph introduced in his Exhibit 17, the .1755 was the value of the trip on the pass.

Mr. HILL. You mean that the Navy did not make an independent investigation of that from their questionnaire.

The WITNESS. No, sir; the Navy made no separate investigation.

Mr. HILL. Took the Army figures.

The WITNESS. Yes.

Mr. HILL. Rate.

The WITNESS. Yes.

Mr. HILL. Is that true of these other distributions?

The WITNESS. The distribution shown in Exhibit 25, the figure, total 3,298 is an actual survey of the Navy employees.

Capt. DAVIS. In other words, you found out how many people used the pass as distinguished from tokens or the 10-cent fares?

The WITNESS. Yes, sir.

By Capt. DAVIS:

Q. But you did not attempt to find out how much these particular people used the pass outside of working hours?

A. Yes, sir.

Q. You took the Army figures on that?

A. Yes, sir.

185 Q. You took the Army figures on the use of the pass?

A. Yes, sir.

Mr. LANE. I take it that your totals down here actually because of the proposed tariff include a large segment of what might be termed purely intrastate passengers in Virginia?

The WITNESS. I have made no distinction whatever between interstate and intrastate.

Mr. LANE. No distinction at all.

The WITNESS. I do not know where the Capital line is.

Mr. QUIRK. Weren't you here this morning?

The WITNESS. I thought I knew before I came here today.

Exhibit 32 corresponds in general to Exhibit No. 20 which Major Ristroph introduced. It takes these figures for revenue that I have developed in the previous exhibits and breaks them down between companies. Where I could allocate the revenue to a specific carrier, as I could for instance in the case of the Roslyn riders, I did so. Where I could not distribute it between the different carriers I followed Major Ristroph's procedure and allocated 50 per cent to the Capital Transit and 50 per cent to the Virginia carriers.

It was necessary to break down further the revenue of the Virginia Companies between the A. & F. and the A. B. & W. and using the figures from Exhibit 25 I developed a ratio of 27.2 per ginia Companies between the A. & F. and the A. B. & W., and and the revenue between the two Virginia companies
186 is split on that basis.

Mr. LANE. Well, again you did not differentiate between interstate and intrastate?

The WITNESS. No, sir.

Exam. MATTINGLY. You may identify this for the record (referring to Exhibit 34).

Mr. HILL. Lieutenant, where are your footnotes 1 and 2 of Exhibit 32; I can't seem to get my eye on them?

The WITNESS. Well, it does not apply to any particular figure, it applies to the whole exhibit.

Mr. HILL. Oh, I see. That does not go back to any column.

The WITNESS. No, sir.

By Capt. DAVIS:

Q. Lieutenant Cone, on this question of interstate as distinguished from intrastate rides, it is quite apparent from the chart, is it not, which ones are the possible all Virginia rides and those that are limited to those on the Roslyn shuttle, are they not?

In other words, except for the Roslyn shuttle all of them go across to the Northern bank of the Potomac, do they not?

A. No, there are 286 riders from the Arlington Farms which is just outside the cemetery there in Arlington. I don't know whether that is outside the District or not, just where the boundary is. Those passengers from Arlington Farms do not cross the Potomac.

Q. Yes; you say Arlington Farms?

187 A. Yes, sir.

Mr. LANE. Well, you are not attempting to state that all of the passengers cross the Roslyn shuttle—go across, are you?

The WITNESS. No, sir.

Mr. LANE. Well, they might have come down from the Virginia side.

The WITNESS. Yes, sir.

Mr. LANE. Or come across from the Key bridge, you do not know which direction they came in.

The WITNESS. No, sir.

Capt. DAVIS. That is all on direct we have at this time.

Mr. LANE. We would like to reserve cross-examination.

Exam. MATTINGLY. Do you wish to reserve cross?

Mr. LANE. Yes.

Exam. MATTINGLY. That may be done. That is all for the present, Lieutenant.

(Witness withdrawn.)

Mr. LANE. If the Examiner please, I now have copies of the document about which we——

Exam. MATTINGLY. Before you do that, let's put this in so as to have it all together there.

Capt. DAVIS. I thought we did offer the form of the questionnaire, and I offer it as War and Navy Department 33.

Exam. MATTINGLY. 33. Well, is it the understanding now
188 that these Exhibits 24 to 33 have merely been identified?

Mr. HILL. That is correct.

Exam. MATTINGLY. And they are still subject to objection before admission?

Capt. DAVIS. Well, I would like to formally offer them.

Exam. MATTINGLY. Well, they have been identified. The matter of whether they will be admitted or not will depend on later developments.

Capt. DAVIS. Yes, sir.

Mr. LANE. For the purpose of completing the record today, I would like to deliver to the Commission copies of the exhibit upon which Dr. Franklin was examined.

Exam. MATTINGLY. No. 34.

(Exhibit 34, Counsel Lane, received in evidence.)

Mr. KETNER. This morning, Mr. Examiner, you made the statement that the Virginia Commission had been duly served with, or words to that effect, notice of investigation in this proceeding. It appears from the Commission's docket here that notice of the investigation was sent to the Virginia Public Utilities at Richmond, Virginia.

Apparently we did not receive it; certainly I did not, and the chairman did not, because the records shows that by his letter to
Mr. Bartel, dated July 26, 1943—I won't read it into the
189 record because it is in the Docket here—in which he points out that he had not gotten a copy of the—well, I will just read it.

Exam. MATTINGLY. Well, that is not necessary.

Mr. KETNER. In other words, he asked the Commission to send him a copy of the notice of investigation.

Exam. MATTINGLY. We did not intend to ignore the Virginia Commission, and if the notice did not reach there I am sorry.

Mr. KETNER. I am sure that is the case.

Capt. DAVIS. Mr. Examiner, our next witness is going to put in figures on the civilian personnel of the Navy Department and I suppose from past experience that that will take a little time, and I think perhaps we should let that go over until tomorrow morning. I think that will be best.

Exam. MATTINGLY. We will suspend until 9:30 in the morning.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned to Friday, August 20, 1943, at 9:30 o'clock a. m.)

190 Before the Interstate Commerce Commission
Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B,"
INTERSTATE COMMERCE COMMISSION BLDG.
Washington, D. C., Friday, August 20, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Before WILLIAM J. PATTERSON, Commissioner; H. H. MATTINGLY, Examiner.

Appearances: As heretofore noted.

191 PROCEEDINGS

Commr. PATTERSON. Col. Barron, you may proceed.

Col. BARRON. Lieutenant Olsen, please.

Lt. EDWARD B. OLSEN was sworn as a witness and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name, title and position for the record, please?

A. Edward B. Olsen. I am the officer in charge of civilian personnel in the Bureau of Naval Personnel in the Navy Department, located in the Arlington Annex, Arlington, Virginia.

Q. Lieutenant Olsen, I show you here a document captioned Table II, which I will ask to have marked for identification, War and Navy Department Exhibit No. 35.

This table is captioned:

"Salary Distribution of Civilian Personnel in Arlington Annex, Bureau of Naval Personnel, Navy Department."

(Tabulation marked War-Navy Exhibit 35 for identification.)

Was this table prepared under your direction?

A. It was, sir.

Q. Will you explain in a general way what it shows?

A. The table indicates two groups of employees with
192 regard to the basic pay.

The first group are those who have a base pay of $1,440 per annum or less and indicating the grade classification levels within which those salaries fall and;

The second group those who have a base pay of $1,440 per annum or over as indicated.

The totals show in the Bureau of Naval Personnel there are 702 employees with a base pay of $1,440 or less per annum and 858 employees with a base pay of $1,440 or more.

Q. Does that cover all of the personnel in the Arlington Annex?

A. No, that is only the personnel of the Bureau of Naval Personnel. There are other employees other than that in the building, if that is what you mean.

Q. That covers the great majority of those in the building, does it not?

A. I should say the best answer to that is that it covers the majority of the civilian personnel in the building.

Q. That is fairly representative of the total civilian personnel in the building?

A. Yes, I would say it is representative

Capt. DAVIS. I offer this exhibit in evidence.

Mr. QUIRK. We object to that on the ground it is irrelevant and immaterial.

Commr. PATTERSON. The objection is overruled.

193 (War-Navy Exhibit 35, Witness Olsen, received in evidence.)

By Capt. DAVIS:

Q. Now, Lieutenant Olsen, I show you herewith table captioned 12, which I would like to have marked for identification as War and Navy Department Exhibit No. 36. This is captioned:

"Table XII. Bureau of Naval Personnel. Average Net Amount of Pay Checks for Normal 15 Day Period and Overtime (Based on Sample of 314 Cases)."

(Tabulation marked "War-Navy Exhibit 36" for identification.)

Was this table prepared under your direction?

A. It was, sir.

Q. Will you explain in a general way what this shows?

A. We arrived at these figures by taking the next last pay roll for the Bureau of Naval Personnel, and we went down the pay roll and marked every fifth name, so that we would in effect come up with a sampling of approximately 20 per cent of the total civilians on the pay roll in the Bureau.

The groups indicated by salary groups, for instance, the first one, $1,200 per annum, besides the sample, were seven. That means then that there were, of every fifth name we took in order to get the sample, seven of them had a base pay of $1,200 per
194 annum, and that is the manner in which we arrived at these, and these were taken from the official copies of the Navy Department pay rolls.

Q. Is this a fairly representative sample so far as you can tell?

A. Yes; it is definitely a representative sample since it was taken from the pay rolls showing people in a pay status.

Q. You have had a lot of general contact with the statistics of personnel in the Navy Department, haven't you?

A. Well, so far as the personnel in the Bureau of Naval Personnel; yes.

Q. So far as you know it is also representative of the other civilian employees stationed at the Arlington Annex, isn't it?

Mr. WHITTLESEY. I object to that question.

Commr. PATTERSON. Answer the question.

The WITNESS. I am not certain what you mean there. This is exactly a sample.

Capt. DAVIS. We will withdraw the question.

By Capt. DAVIS:

Q. This is representative, is it not, of the Bureau of Naval Personnel?

A. Yes, sir; it is.

Q. And do the employees of that Bureau include the great bulk of employees at the Arlington Annex except for the Marine Corps?

A. The great bulk of the civilian personnel; that is right, sir.

195 Q. Now, I show you table captioned Table 13, which I will ask to have marked for identification as War and Navy Department Exhibit No. 37.

Before doing that I meant to offer Exhibit No. 36 in evidence.

Mr. QUIRK. I make the same objection to that.

Commr. PATTERSON. Overruled.

Mr. PRETTYMAN. Could I ask a question about 36 at this point?

By Mr. PRETTYMAN:

Q. What do you mean by "normal 15-day period?"

A. Simply that the pay roll is based on a 15-day period.

Q. What 15-day period?

A. The 15-day period beginning July 16, and ending July 30.

Q. 1943?

A. Yes, 1943.

(Tabulation, Table XIII, marked "War-Navy Exhibit 37" for identification.)

By Capt. DAVIS:

Q. Turning now to Table 13, which has been marked for identification as Exhibit No. 37, was this table prepared under your supervision?

A. It was, sir.

Q. Will you state in a general way what it shows?

A. This table indicates the relationship between the location of work and separation rate among civilian personnel of the Navy Department.

196 It covers a period of seven months beginning January 1, 1943, and ending July 30, 1943, indicating first, the total number of separations for the entire Navy Department of civilian personnel, located in all buildings, and in all locations of the Navy Department, then specifically the total separations by month in the Arlington Annex of the Navy Department, showing both the Bureau of Naval Personnel and the Marine Corps, the percentage of separations by months.

The second half of the table indicates the total Naval personnel, the relationship between the percentage of personnel in the Arlington Annex and the rest of the Navy Department, so that whereas 18.2 per cent of all separations of civilian Naval personnel occur in the Arlington Annex, yet only 14.2 per cent of the total Navy personnel is located in the Arlington Annex.

Q. In other words, the separation rate in the Arlington Annex is very substantially higher than at the other installations?

A. That is right, sir.

Q. Now, when you refer to the total civilian personnel, is that of the whole Navy Department or is that located in Washington and vicinity?

A. The column headed "Total Naval Personnel" is the total departmental civilian personnel of the Navy Department in

197 Washington, D. C. and nearby areas. It is departmental service.

Capt. DAVIS. I offer Exhibit No. 37 in evidence.

Mr. QUIRK. The same objection.

Commr. PATTERSON. Overruled.

Mr. PRETTYMAN. Could I ask a question, Your Honor?

Commr. PATTERSON. Yes.

By Mr. PRETTYMAN:

Q. Is this percentage of Arlington separations, that is the rate of separations, isn't it?

A. Well, I suppose it could be called a rate, for January, 19.6 per cent of all separations were in Arlington, and I guess that can be called a rate.

Q. So that is not the rate, then, it is the percentage.

Well, let us take January. Your 19.6 is the per cent that Arlington separations were of total separations in the Navy personnel, is that correct?

A. That is right.

Q. So that it is not the rate of separation in the Arlington personnel.

Capt. DAVIS. It is figured by a different method than the War Department exhibit was.

Mr. PRETTYMAN. Let us say it is not the percentage of the Arlington personnel that separated during the month of January, is it?

The WITNESS. Yes, I think that that is so. It means that 19.6 per cent of all separations in the Navy Department occurred in the Arlington Annex.

198.

By Mr. PRETTYMAN:

Q. It does not mean 19.6 per cent of the Arlington personnel was separated from the service during the month of January?

A. It does not mean that.

By Capt. DAVIS:

Q. If you wanted to get that percentage, you would take the percentage which 147 bears to 2,188 as shown in the first line?

A. Yes; those figures are available from the table.

Q. They could easily be calculated from this table?

A. That is right.

Q. Similarly, if you wanted the percentage of separations in the whole Navy Department, they could be calculated by taking, for the month of January, your percentage which 749 bears to 19,390, could they not?

A. That is right, sir.

Capt. DAVIS. That is all of the direct.

Mr. PRETTYMAN. I have not finished. I had only asked one question.

Capt. DAVIS. I beg your pardon.

Mr. PRETTYMAN. It is all right with me to pick up in between.

By Mr. PRETTYMAN:

Q. This heading to Table 13, where it says "Separation Rate," is not accurate so far as the use of the word "rate" is con-

199 cerned; it is not intended to reflect the rate without the additional calculations that Captain Davis has referred to; is that right?

A. I think that that is right.

Q. Now, your separations, as reported, include people that are fired?

A. That is right. Any separation from the pay roll, whether it be a discharge or a voluntary resignation, is included in these figures.

Q. And it includes leave without pay for more than 30 days?

A. No; it does not.

Q. Your figure does not include that?

A. It does not include leave without pay unless the leave without pay led to a separation from the pay roll. I can explain it this way——

Q. Leave without pay for more than 30 days, that does not necessarily mean that the person will be discharged for that?

A. Not at all.

Q. Unless they are discharged, they are not in the separation figures, is that right?

A. Well, or they may resign.

Q. What other classifications do you have in your separations besides resignations, discharges——

A. I think that there are no other groups included there.

Q. Just those two. About deaths, how about deaths?

A. If someone dies they are separated.

200 Q. It counts as a separation?

A. Yes, sir.

Q. How about induction into the service of a civilian employee?

A. Personnel inducted into the armed forces are carried on the pay-roll in a furlough status.

Q. Not counted as a separation in these figures?

A. I should say it does not because they are still carried on the pay roll.

Q. I would like to have a certain answer; if you don't know, if you can just find out and let us have the correct answer because we would like to find out what these figures represent so would you find out a certain answer for that, because the Army as I understand, does include in its separations those that are inducted into the service.

A. All right, I will verify that.

Q. Will you find out and let us have that answer, please?

A. Yes, sir.

Q. Now, how about retirements?

A. Those are separations.

Q. Those are separations?

A. Yes, sir.

Q. Now, do you have in the Navy, the exit interview system?

A. Yes, sir; we do have.

Q. Do you have 25 reasons in your exit interview form?

201 How many reasons do you have in your exit interview form?

A. I can't say exactly but I believe the form provides for 25 reasons with a space left for other reasons.

Q. Now, does the Navy publish a little pamphlet called "Statistics on Civilian Personnel," like the one the Army publishes?

A. I am not familiar with any publication of that type.

Q. Is there any publication that shows an analysis of the exit interviews over the period January to July of 1943?

A. I think that there is no publication. If you will define what you mean by "publication" I can answer that better.

Q. Well, I will make it broad. Is there any compilation, any statistical compilation made from the exit interviews for the period January to July of 1943?

A. Yes; I believe the central office of the Division of Personnel Supervision and Management of the Navy does compile such figures.

Q. Do you have that compilation?

A. I have not.

Q. Could you let us have that compilation of the exit interviews covering separations for the period January to July of 1943?

Col. BARRON: We will be glad to supply that type of in-

202 formation, if the Navy has it available, and we will also be glad to supply information showing the voluntary separations, as separated from the other. It will take about two days to compile it.

Commr. PATTERSON. It will be provided and supplied for the record.

Mr. PRETTYMAN. If Your Honor please, we would like to have first, we would be very glad to have the additional data that Col. Barron referred to but we would like to have the compilation as it now exists in the files of the Navy Department and then such additional compilations as Col. Barron might want to make.

Commr. PATTERSON. That will be furnished?

Col. BARRON. We will furnish any that we find. I don't know just what they have and they are not right certain, in order to compile a table showing the voluntary separations, the Navy experts here state it will require about two days time. If there is any such data already on file in the Navy Department, we will be glad to furnish it.

Mr. PRETTYMAN. That is all of the questions that I have at this time.

(War-Navy Exhibit 37, Witness Olsen, received in evidence.)

(Witness excused.)

Capt. W. C. LAXTON was sworn and testified as follows:

203 Direct examination by Capt. DAVIS:

Q. Captain, will you state your name and position for the record?

A. Captain W. C. Laxton, officer in charge of the Civilian Personnel, Headquarters, U. S. Marine Corps.

Q. Captain Laxton, do you know the number of civilian personnel at the Arlington Annex of the Marine Corps who receive base pay of $1,440 or less and the number receiving more than that?

A. At present date, 378 receive $1,440 or less and 678 receive $1,440 or more, or above $1,440.

Q. Captain, I show you a document which I will ask to have marked for identification as War-Navy Department Exhibit No. 38, which is captioned:

"Headquarters U. S. Marine Corps, Average Salaries Received at Various Salary Levels."

(Tabulation "marked War-Navy Exhibit 38" for identification.)

Was this exhibit prepared under your supervision?

A. Yes, sir; it was.

Q. Will you state in general what it shows?

A. This table is a sampling, approximately a 20 per cent sample, taken directly from the pay roll, showing the gross earnings in the various salary levels as indicated here, the deductions
204 for various reasons, and the net amounts received by the individuals. The sample is approximately 20 per cent and was checked off by going down the pay roll and marking every fifth name.

Q. This is a very representative sample, is it not?

A. This is an actual 20 per cent sample of the total civilian personnel in Headquarters, Marine Corps.

Q. And are all of the personnel of the Headquarters of the Marine Corps located at the Navy Arlington Annex?

A. No, sir; there are approximately 75 to 80 civilians located in the main Navy Building. They are part of the Division of Aviation.

Q. But except for those, all of the rest are out there?

A. Yes, sir.

Q. What percentage is it?

A. It would be probably 80 out of 1,056.

Q. Over 90 percent of the employees are at the Arlington Annex?

A. That is right.

Commr. PATTERSON: I take it that this is a 15-day period.

The WITNESS. Yes, sir.

Capt. DAVIS. That is all of the direct.

Commr. PATTERSON. That is received.

(Tabulation, War-Navy Exhibit 38, received in evidence.)

205 By Commr. PATTERSON:

Q. Under your per annum salary, you show gross earnings of $199.43. That is accurate?

A. Yes, sir; that is base salary, and overtime, sir.

Exam. MATTINGLY. That is an awful lot of overtime. Is that a 15-day period, at $1,620 salary?

The WITNESS. Yes, sir; those are the pay roll figures, and they were checked, sir.

Commr. PATTERSON. You get down here to your annual salary of $1,980, and it is there $99 less, with a base pay of $300 more.

Capt. DAVIS. We will be glad to have the Captain recheck that.

The WITNESS. I am afraid that there is some error there. It does not look right for the $1,620 salary. I will be glad to recheck that for the record.

By Mr. HILL:

Q. It does tend to show that the base pay of a particular employee is not indicative of his income, does it not?

A. Well, I don't know quite how to answer that, sir, because the base pay of an individual might include his total income and it might not but for this particular figure the only thing I can do is to apologize for it. I am afraid that there is some error in it somewhere.

Q. The fact is that anybody's income in any of these classes would depend partly on his base pay, partly on his overtime
206 and partly on any other prerequisites he may receive?

A. That is right.

Mr. HILL. Thank you.

By Mr. PRETTYMAN:

Q. That first column, it shows per annum salary, base pay; is that right?

A. Yes, sir.

Q. Now, then, as of what day is that base pay fixed?

A. This particular table was taken from the pay roll period July 16–July 30.

Q. Is that the base pay schedule as of July 16?

A. These, sir, are base pay rates under the government pay scale.

Q. Has there been a general increase in that government pay scale since last October, other than the overtime?

A. No, sir.

Q. Now, Captain, in offering this exhibit, I assume that you take the view that the item up in the last column, the net amount paid, is material to the question of the fair and reasonable rates of these companies to the Pentagon Building?

Col. BARRON. He is not qualified on that. He is not an opinion witness. He is not an expert except on the compilation.

Commr. PATTERSON. Repeat the question.

(Question read.)

Commr. PATTERSON. If you don't know the answer you can say you don't know.

The WITNESS. I would hesitate to answer that. I don't feel qualified to give an answer.

By Mr. QUIRK:

Q. Captain, I notice in the third from the last item on there, Per Annum Salary, $2,600, the net amount paid was $163.67, three samples. Does that mean three persons?

A. Yes, sir.

Q. Then the last item on the exhibit $3,200 per annum salary, and the three persons received $98.87.

A. Yes, sir.

Q. Does that mean that the less salary you get the better off you are?

A. No, sir; I would not say that. You will notice that there is a difference in the amount of deductions between the $2,600 group and the $3,200 group.

By Mr. PRETTYMAN:

Q. Can I point out there, in that last column, the net amount paid, the man who got $1,620, was $146.47, and the man who got $1,620 apparently got more money than the man who got $1,680 or $1,740 or $1,860 or $1,920 or $1,980, or $2,000 or $2,300 or $2,900 or $3,200, the man with $1,620 apparently got more money than anybody in the schedule except the fellow who got $2,600.

A. I have admitted that the $1,620 figure is in error. I will have to check that and re-submit it.

By Mr. QUIRK:

Q. Now, these other figures, are they also in error, the ones that I have called your attention to?

A. I don't think so, sir. The table was checked carefully but an error has crept in, I am sure, in the $1,620 group.

Exam. MATTINGLY. Doesn't it look like a similar error might have gotten into the $2,600?

By Mr. HILL:

Q. Unless they worked 24 hours a day.

A. I think that that $2,600 group is correct, sir.

Q. In the $2,600 group, Captain, these people made as much in overtime as they made in base pay, is that correct?

A. No, sir.

Q. Multiply $219 by 24.

A. Let us see, we had three samples, gross earnings $219.67.

Q. That is an income of roughly $5,000 per annum, is it not?

A. No, sir.

Q. Isn't it, isn't that for a 15 day period, $219?

A. That is right.

Q. At that rate, then, wouldn't you multiply that by 24 to get his annual income?

A. That is the annual base pay; yes, sir; that is the gross earnings, base pay plus overtime.

Q. Doesn't that come up around $5,000 per annum?

A. It comes pretty close to it, sir.

Q. Then the overtime practically matches his base pay?

A. That is the way it looks but it should not come that way.

209 Q. There is either an error there or the base pay means nothing.

A. I will agree with that; yes, sir.

Exam. MATTINGLY. Don't you think that you had better have this whole exhibit checked over again pretty carefully?

The WITNESS. It was prepared in considerable haste, and it should be checked again.

By Mr. PRETTYMAN:

Q. Now, looking at that last column in the last two figures, according to that last column, the man gets $2,900 and he receives $111.26 and the man who gets $3,200 receives $98.87. That is what those figures show, is it not?

A. You will notice there, sir, that the bond deduction rate makes a considerable difference.

Q. That is just what I was coming to. In other words, these last figures depend upon the amount of war bonds that particular persons happen to be buying at the moment and in the case of the $2,900 fellow you only used two people.

A. The amount shown in the last column will depend, of course, on the total deductions and the bond rate is one of the deductions.

Q. So that if you happen to pick two people that are buying $7.50 worth of bonds over in your last column, you get one figure, if those two people happen to be buying $30 worth of

210 bonds your last column shows a totally different figure there.

A. Yes, sir; it would.

Q. So that your last column is influenced in large amount by the amount of war bonds the particular samples you happen to pick are buying.

A. That is right, sir.

Q. All right.

A. I would like to state that these are random samples, they were not selected samples, at all.

Mr. PRETTYMAN. I interpose a motion to strike this exhibit.

Commr. PATTERSON. I think that the exhibit should be entirely rechecked, and if that is satisfactory, the exhibit will be taken back and rechecked.

Col. BARRON. That is all right.

Mr. HILL. Captain, will you check your retirement figures at the same time? I doubt whether the retirement would be $3 for $1,440 employees and $7.92 for $1,620 employees. That seems like too big a spread.

The WITNESS. I am thinking, sir, that the whole $1,620 line is in error.

Col. BARRON. We will have that rechecked and substitute another exhibit for this number, if it is all right, we will let this stay in and substitute it later.

211 Mr. HILL. Since the exhibit may not be here at this time may I ask when the substitute comes in, may I ask a question at this time?

Commr. PATTERSON. Yes.

Mr. HILL. On the basis of the exhibit?

Commr. PATTERSON. Yes.

By Mr. HILL:

Q. It is a fact, is it not, Captain, that the withholding tax goes to the United States Government, presumably?

A. Yes, sir.

Q. The 5 per cent retirement belongs to the employee, does it not?

A. I would say the 5 per cent retirement is held in trust for the employee.

Q. In a sense, it is his?

A. Yes, sir.

Q. If he resigns or retires, he will get the benefits of it?

A. Yes, sir.

Q. The bonds are his, are they not?

A. Yes, sir.

Q. We hope.

A. Yes, sir.

Q. So all of these deductions are either his money or the money of his government?

212 A. Yes, sir.

Q. So all of these deductions are either his money or the money of his government?

A. That is right.

Mr. HILL. That is all.

Commr. PATTERSON. You are excused.

(Witness excused.)

Col. BARRON. We will call Mr. Kosh.

DAVID A. KOSH was sworn as a witness and testified as follows:

Direct examination by Col. BARRON:

Q. Will you please state your name and address?

A. David A. Kosh, 2249 North Harrison Street, Arlington, Virginia.

Q. By whom are you now employed?

A. I am in the employ of the Office of Price Administration.

Q. What division?

A. Public Utilities Branch.

Q. What is the nature of your position?

A. Senior rate analyst in that branch, engaged in analyzing all types of rate matters coming before the attention of that branch.

Q. Are you chief of the Transportation Section?

213 A. Yes, sir.

Q. What are your duties generally?

A. All rate matters that come to the branch are analyzed from all points of view, earnings of the company, adequacy of the rates, and similar things. It is my duty to analyze those cases.

Q. That includes—does that include the analysis of financial and operating and other technical data?

A. Oh, yes, sir; it does.

Q. Including depreciation and taxes?

A. Yes, sir; it does.

Q. In what capacity do you appear in this proceeding?

A. The War Department requested of the Office of Price Administration to make available to that department certain technical personnel, and I and my assistant were assigned to that job.

Q. Please describe briefly your education and experience in this field?

A. I received a Bachelor of Science degree in engineering from Columbia University in 1933, Master's degree the following year. Immediately upon graduation I was employed as a mathematician with the Coast and Geodetic Survey and I then took a position with the Tennessee Valley Authority as a utility engineer, and worked there until 1938.

214 I then went as a utility engineer with the American Gas & Electric Service Company, and the following year

I joined the firm of Matting and Highland in New York; on special analyses of road and bridge construction work.

I left that position to take the job doing research work for the Public Utilities Department of New York University, School of Commerce, at New York University. While doing research there I also taught courses in public utility economics, mathematics, and mathematical economics, on post-graduate level.

Also during that time I was employed as Chief of Research for a consultant who specialized in public utilities matters of all sorts, including transportation. His work was in preparation of cases before commissions and courts.

Mr. HILL. What was the name of that company.

The WITNESS. That was not a company. That was a private consultant.

Mr. HILL. What was his name?

The WITNESS. Dorou. Professor Dorou.

By Col. BARRON:

Q. Do you hold the degree of Master of Business Administration?

A. In 1942 I obtained that degree from New York University.

Q. Are you a member of any technical societies?

A. Yes, sir; I am a member of the American Society of Civil Engineers, a member of the National Honorary
215 Scientific Society, National Honorary Business Society and an honorary statistical fraternity.

Q. What if any analyses have you made at the request of the War Department of the reports of the Capital Transit Company on file with the Public Utilities Commission of the District of Columbia?

Mr. PRETTYMAN. I would like to ask the purpose of that question, if Your Honor please.

Commr. PATTERSON. Repeat the question.

(Question read.)

Commr. PATTERSON. You may ask that question.

Mr. PRETTYMAN. I asked the purpose of the question.

Commr. PATTERSON. What do you propose to prove by the question?

Col. BARRON. We propose, that is preliminary, of course, to the other questions; we propose to show by this witness the financial condition of that company, as well as other companies which he has analyzed, their depreciation, their income, their properties.

Comm. PATTERSON. Couldn't that all be submitted in the form of an exhibit?

Col. BARRON. Yes, sir; but based on the basic exhibit, other exhibits have been prepared, the basic exhibit on which much of

the data has been prepared as well as upon these reports.

216 Commr. PATTERSON. Will there be an exhibit produced?

Col. BARRON. Of course there will be many exhibits offered. The basic exhibit is the income tax returns.

Mr. PRETTYMAN. Let me say, if Your Honor please, that I am going to object on behalf of the Capital Transit Company, to any line of questions, and the reason I interpose at this point is in order to get it in the record at the very beginning, which go to the figures that Col. Barron has referred to, that is, the financial standing and financial figures, the rate base, and I will say to Your Honor that I take this position quite deliberately, and it is not just an offhand objection.

We object on the ground that that material is totally immaterial and irrelevant to any possible question in this case.

The facts of this situation are that the Capital Transit Company operates in the District of Columbia. Under an Act of Congress the Public Utilities Commission of the District of Columbia fixes the valuation on the property of the company, used and useful in the District of Columbia and fixes a just and reasonable rate of the company within the District of Columbia.

That is an Act of Congress, that is a function that the Public Utilities Commission performs.

It is also a fact that the Utilities Commission of the Dis-

217 trict is at present engaged in an investigation of the fares within the District of Columbia.

Now, this particular service that we are talking about, as the record will undoubtedly disclose, is a special service from certain points in the District over to the Pentagon Building, and it is a rush hour service. It is a one-way trip, it is a nonstop trip.

In other words, it is a special service for these particular employees outside of the District of Columbia.

Exam. MATTINGLY. You said, from particular points in the District.

Is it your idea that this case involves only the fares from say, 7th and Constitution Avenue and 19th and C, over to the Pentagon, or what is your idea about that?

Mr. PRETTYMAN. It involves that additional service, in addition to the general service that is within the District of Columbia.

Exam. MATTINGLY. It involves from every point in the District of Columbia to the Pentagon Building, doesn't it?

Mr. PRETTYMAN. In general, but this particular service that goes to the Pentagon Building is a special service from certain points over to the Pentagon Building.

Commr. PATTERSON. Is it your thought that is special service, from any point in the District of Columbia by motor carrier to the Pentagon Building?

Mr. PRETTYMAN. No, there is no special service from
218 other points of the District of Columbia. There is the general service within the District of Columbia which anybody within the District of Columbia can use to get to the terminal points of this particular service, and this particular service, where it is there picked up, is a special rush hour nonstop express service to a designated point.

We don't pick up passengers en route, and in the great majority of cases we don't bring any passengers back, on the return trip, that is that special service that brings this case on.

Now, my point is, first, the practical point, if we are going into the question of the return of the Capital Transit Company, this Commission will have to try a complete valuation and rate case for the Capital Transit Company within the District of Columbia.

That is an affair, that would be a proceeding that would take months to prepare, and it would take weeks to present, and it would cost thousands and thousands of dollars.

Col. BARRON. We are prepared.

Mr. PRETTYMAN. In the second place, this Commission would have no right to fix the fares within the District of Columbia so far as the District of Columbia is concerned, of course.

Now, if the District Commission, in the proceeding
219 which they have already started in investigating these various things, if the District Commission should find that the Capital Transit Company is earning excess, that their fares are too high, the District Commission would require that the fares be reduced to a fair return on the fair value of the property within the District of Columbia and that is an Act of Congress that they should do that, and they would do that.

This extra-District operation would have no part in that particular picture. In other words, there is no reason why, if the rates in the District of Columbia, within the judgment of the Public Utilities Commission, should be too high, why the people generally in the District of Columbia should not get the benefit of a reduction in fares instead of this particular group of people riding free.

We say, if Your Honor please, that the gross figures of the Capital Transit Company have no materiality to this particular question.

Now, this particular question, the proper fare here can be determined by the ordinary rules applicable to a service of this sort, namely, what is a comparable fare, what is the service rendered, what is the distance, and all of that evidence is perfectly easily and readily available, as to what is a comparable fare, a reasonable charge for the service rendered and what is the distance that it must travel.

220 Now, we say that this case should be decided on those facts, and we are quite earnest about it, because if we have to go into a complete valuation and rate case, we are already preparing for one in the District, it means an enormous expenditure on behalf of the company and I have no doubt for the other companies too, and we have to go into the same thing for them and it is a duplication and something that has absolutely no bearing on the question that is before this Commission.

Col. BARRON. Of course, the District Commission has jurisdiction, as he says, they have had a proceeding pending a long time, and what they are going to do about it we don't know. They have apparently dropped it from our standpoint, and nothing is being done.

Mr. PRETTYMAN. Colonel, I am sorry, but that statement is not accurate.

Col. BARRON. When have they started?

Capt. DAVIS. They had a hearing in May of 1942, on these rates to these points, and the Capital Transit Company came in and filed a big brief saying that the Commission had no jurisdiction over these rates, and since then that Commission as far as we know has taken no further steps.

Mr. PRETTYMAN. It has nothing to do with these rates. The Commission ordered in the spring of this year, and I forget
221 the exact month, an investigation into the value of the property of the Capital Transit Company and the fares of the Capital Transit Company in the District of Columbia.

Col. BARRON. That may be.

Mr. PRETTYMAN. Not may be, Colonel; it is.

Col. BARRON. As far as this Commission having jurisdiction is concerned, of course in the District the other Commission has jurisdiction but they are engaged in interstate commerce and this Commission has jurisdiction by that simple fact.

The Commission's order envisions an inquiry into the reasonableness and lawfulness of the rates and fares of all respondents between all points in the District on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building and Navy Arlington Annex, and the Army Air Force Annex, with a view to making such findings and prescribing such, just and reasonable and otherwise lawful, local and joint fares and are within the power of the Commission, and it includes all points in the District.

That is in the order.

These people live at all points in the District. I don't see how any investigation of this type which goes to the heart of the earnings of these companies can get to first base without we are permitted to introduce the necessary data of this character

222 and I don't see how the Commission can decide whether or not there are reasonable returns being made without knowing how much money they are making and that is what we are trying to show. It is as simple as that to us.

Mr. PRETTYMAN. It is very simple to the War Department but it is very complicated when you get into it, and if I can say one thing more, we have zone fares on the other side, in Maryland. That is first zone, second zone, third zone and fourth zone and now every time we fix one of those zone fares in Maryland, does the Maryland Commission undertake to fix the value of all of the property of the Capital Transit Company in the District of Columbia—that is, the property used and useful throughout its entire system?

Of course not.

The same thing happens in every big city all over the United States.

When you get outside of that general jurisdiction, every Commission that has jurisdiction over a mile and a half of line beyond the limits of the city, does not go into a complete valuation and rate case of the entire company. The question is there under our American system of fixing rates, which is not a strict mileage proposition but which is a general principle of inter-city limits, you have a certain over-all fare and then when you get certain

223 distance out other fares are fixed on a distance, a combination rate is our usual system.

You have the same question arise all over the country, in different jurisdictions and you don't go into a complete valuation rate case of the entire company to determine the extra fare for a little piece of line outside of the basic jurisdiction.

Mr. QUIRK. Mr. Commissioner, as this goes to a very basic question, in the case, and will probably affect all of the respondents, if I may be permitted to, I would like to make this supplemental statement of what Mr. Prettyman has said.

This Commission has held several times, many times, that revenue from operation of a carrier as a whole, or from carriers in a group as a whole, and the net income from over-all operations, is not relevant and material when you are considering particular rates on particular traffic for particular services, and the Supreme Court has held the same thing.

That is in the North Dakota case, in Volume 236, U. S. is one case, and there are many others, and this Mid-Continental Oil Case, of this Commission, is one that comes to my mind, that is in 139 I. C. C.

So it is a rather well settled principle of administrative practice of this Commission to reject or to consider as irrelevant the

224 over-all operations or revenue from over-all operations, when there is before the Commission only the reasonableness of particular rates.

That works both ways.

I mean by that last remark that in some instances where the railroad is earning a lot of money, such as has been the case in the Pocahontas Lines for years, this Commission has refused to reduce their rates because of their particular earnings on particular traffic.

You might just as well say that if the earnings happened to be very low, these particular rates should be increased.

Commr. PATTERSON. In that case it was due to the effect on the earnings of competing carriers, wasn't it?

Mr. QUIRK. In the Tidewater case, yes; but you have overlooked what I really meant to convey, and that is this:

During even the depression years the Pocahontas lines have done very well, comparatively, and there have been a great many cases involving particular rates of those railroads, and in general this Commission has refused to decide that those particular rates were unreasonably high merely because the over-all results of the Pocahontas Lines were good.

Capt. DAVIS. If the Commission please, the order itself covers the transportation between all points in the District of Co-
225 lumbia and these four installation and now of course if all of these people that travel on the Pentagon bus line lived right down at 19th and C, there might be some slight basis for Mr. Prettyman's argument but as a matter of fact they live all over the District, so that in order to consider what is a reasonable fare for the through route from home to work, the Commission has to consider the over-all operations of the Capital Transit Company, and the order so provides.

Now, Mr. Prettyman referred to the situation of the Maryland Commission, and its regulatory powers over the Maryland lines, and we don't see what that has got to do with the powers of this Commission.

It may be that the Maryland Commission could not regulate the fares for transportation from points within the District to Maryland but this Commission could if it was appropriate. However, we are not going into the Maryland fares here but we do have to go into these through fares from points in the District to these various points in Virginia, and in order to make proper analysis it is obviously necessary to consider the over-all financial structure of the Capital Transit Company.

Mr. QUIRK. Mr. Commissioner, I think the Major overlooked one important point here, which neither Mr. Prettyman nor I have been specific about. We don't question the jurisdiction of
225-A this Commission to fix the fares here. The question is what evidence you are going to consider to indicate whether the fares ought to be up or down.

Now, take my client, the A. B. & W. Transit Company. This operation represents about 15 per cent of their total revenue and I dare say that in the case of the Capital it represents even a smaller per cent.

Incidentally, Mr. Prettyman did not mention that a great part of the Capital Transit Company revenue is from street car operations, which are not involved here at all but that is the point of it, that for a small proportion of our total over-all picture they want, to show that because we earn so and so from the over-all operations that that is relevant to determine whether these particular rates on 15 per cent of the whole are reasonable.

Col. BARRON. This affects their whole rate structure, this proceeding, as far as that is concerned, we are asking as a fundamental proposition, that these adjacent areas be treated as part of the District for rate-making purposes and I don't see how you can get away from it.

Mr. PRETTYMAN. That is exactly the point that I raise and I press the point.

Col. BARRON. If you follow their theory, nobobdy is going to have effective jurisdiction.

Mr. QUIRK. The Commission has been getting along on the other theory for about fifty some-odd years.

226 Mr. DUNLOP. May I ask, before we take the recess, suppose that this Commission should undertake this job of finding a fair return in the District of Columbia, in order to determine what proportion of this rate or what the joint rate should be, on the theory that a joint rate or reasonable return in the District of Columbia or reasonable fare in the District of Columbia would be one thing, contrary to what the Public Utilities Commission of the District of Columbia has found to be a reasonable fare, what would be the result?

Is this Commission's finding as to what a reasonable fare in the District of Columbia for transportation from any point in the District of Columbia to any other point in the District of Columbia a pertinent thing?

Commr. PATTERSON. No; this Commission is not fixing any fare within the District of Columbia.

Mr. DUNLOP. They would have to on this theory.

Mr. HILL. May I ask that some consideration be given to the fact that the Arlington & Fairfax has challenged the power of the Commission to fix through routes and joint rates between the Capital Transit and the Arlington & Fairfax?

Mr. WHITTLESEY. Mr. Commissioner, may I ask this witness three preliminary questions before we recess, please, sir?

Capt. DAVIS. On his qualifications?

227 Mr. WHITTLESEY. Yes; as to his presence here.

Capt. DAVIS. As to his qualifications, because that is the one thing that he has testified to here.

Mr. WHITTLESEY. Yes, on his qualifications.

Col. BARRON. I don't see any objection.

By Mr. WHITTLESEY:

Q. You are an employee paid by the United States Government?

A. Yes, sir.

Q. You are an employee of the Office of Price Administration?

A. That is correct.

Q. Now, you can answer this question yes or no.

Does your testimony concern in any way a proposed increase of rates?

A. You mean by that, will the tenor of this testimony be that certain rates should be increased?

Q. No; my question was, I can put it more specifically, were your instructions when you undertook this survey or analysis, bottomed on or concerned with a proposed increase of rates?

A. No, my instructions were——

Mr. WHITTLESEY. That is all.

Capt. DAVIS. He can explain his answer.

The WITNESS. My instructions were to make myself available to Col. Barron's office in connection with this case and make such analyses as were proper, that is all.

By Mr. WHITTLESEY:

Q. Now, my last question:

Did you or your office get a ruling from the Comptroller General that you could do that, and that the expenditure in this case would be proper?

A. I don't know about that.

Mr. WHITTLESEY. That is all.

Commr. PATTERSON. We will take a ten-minute recess.

(Recess.)

Commr. PATTERSON. Before we proceed further, if the reporter will read the ruling I made.

The REPORTER. I am sorry, Mr. Commissioner, but I have just relieved the reporter who took your ruling.

(Discussion off the record.)

Commr. PATTERSON. The ruling is that the evidence of this witness will be received, subject to objection and subsequent ruling.

Mr. PRETTYMAN. And I understand, your Honor, that after the testimony of this witness has been received it will furnish us with a sample of the evidence that is intended to be presented along these lines. In behalf of the Capital Transit Company I will submit a motion to strike and at that point ask for a formal ruling on this general question as raised.

Commr. PATTERSON. That is right, except that it may not be confined to this particular witness.

Mr. PRETTYMAN. No.

Commr. PATTERSON. We may take further evidence of this kind subject to the same ruling.

Mr. PRETTYMAN. My motion will be broad enough to cover any evidence along that line.

Mr. HILL. Your Honor, so that we may be informed, may I inquire of Colonel Barron if it is his intention to present the same type of evidence in respect of the Arlington and Fairfax?

230 Col. BARRON. I do.

Mr. QUIRK. And for the A. B. & W.

Col. BARRON. That is right.

Mr. WHITTLESEY. And for the Washington, Virginia and Maryland.

Col. BARRON. That is right.

Mr. WHITTLESEY. In that event I join in the motion made by Mr. Prettyman, or to be made subsequently. And with respect to the W. B. & M. wish to add an additional objection that may have some bearing on this general testimony about that company. This company is serving only the Pentagon Building and is serving only that building only because of the request of the Office of Defense Transportation, and there was a limited order issued by the Interstate Commerce Commission at the prevailing rates of fare that have been in existence for ten years, and it is rush-hour service only; it is a special service that amounts to probably less than 1 per cent of the total revenues of the company and for that reason it appears to be wholly irrelevant, at least insofar as the Washington, Virginia, and Maryand is concerned.

Col. BARRON. If counsel is going to testify, I suggest that he be sworn.

Commr. PATTERSON. This temporary order was issued at the request of your client.

Mr. WHITTLESEY. Yes, sir; we filed that application at 231 the instance of the O. D. T.

Col. BARRON. I think that the comment ought to be restricted. I think there is too much talk. If they are going to testify then they ought to be sworn.

Commr. PATTERSON. Well, that same ruling will apply with respect to the other respondents.

Col. BARRON. It is immaterial from our standpoint, but some question was raised by certain of the counsel as to this witness' authorization to appear here. I have one of the major officials of the O. P. A. present and he will be glad to state that that agency authorized this appearance if the Commission is interested.

Commr. PATTERSON. We are not concerned with that, and I take it that the witness will take care of himself so far as his authority is concerned to appear here.

Colonel BARRON. All right. I think it is utterly immaterial. Go ahead with the questions, Captain Davis.

By Capt. DAVIS:

Q. Mr. Kosh, in order to examine the financial structure of the Capital Transit Company, what steps did you take first?

A. I obtained a copy of the annual report filed by that company with the Public Utilities Commission of the District of Columbia, and also had available monthly reports that that company filed with the Commission.

Mr. PRETTYMAN. May it please your Honor, we object to
232 each and every one of these questions.

Commr. PATTERSON. You object to this testimony.

Mr. PRETTYMAN. We object to testimony along this line in toto and by item.

Mr. QUIRK. And we all object to it.

Mr. HILL. Yes; we join in that too, Mr. Commissioner, in order that the record may be complete.

By Capt. DAVIS:

Q. There were no reports of the Capital Transit Company on file with this Commission, were there?

A. No; there weren't any that I could get.

Q. Now, in your opinion was it practical to obtain a sufficient picture of the financial operations of the Capital Transit Company from the examination of those reports which were on file with the Public Utilities Commission?

A. No.

Mr. PRETTYMAN. I object on the further score that this witness is not qualified to express an opinion.

Capt. DAVIS. He is an expert in this line.

Mr. HILL. I think he should be qualified further.

The WITNESS. No; all the information was not available in those reports.

By Capt. DAVIS:

Q. Sufficient for this proceeding?

A. That is right.

Q. When you found that out what did you do?

A. I suggested to you that we obtain certain additional
233 information and made a list of the required additional information.

Q. And after that did you go over with me to the office of the Capital Transit Company?

A. I did.

Q. And what took place there?

A. We presented that list to the comptroller of the company.

Q. Who was that?

A. Mr. Heberle.

Q. Go ahead.

A. There were quite a few questions on there. There were some of these questions Mr. Heberle indicated where we could get the information and offered to get it for us there. There were two pieces of information Mr. Heberle said that he would not give us that information, but that he would consider furnishing a break-down of the income tax and a break-down of the annual allowance for depreciation.

Q. You believe that those two items are important, do you not, in making a financial analysis of the operations of this company.

A. Oh, yes.

Q. And after that conversation with Mr. Heberle did you ever hear anything further from the company concerning that information?

A. I understand no.

234 Col. BARRON. At this point I would like for the witness to yield for a moment and I would like to put Captain Davis on. Just sit down there. (Witness temporarily withdrawn.)

Captain PAUL S. DAVIS was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. State your name and position.

A. Paul S. Davis; Captain, Judge Advocate General's Department; Litigation Division, War Department.

Q. You are of counsel in this case?

A. I am, sir.

Q. You heard the answers of the preceding witness, Mr. Kosh concerning efforts made by the War Department to obtain certain financial information from the Capital Transit Company?

A. Yes, sir; I did.

Q. Will you state, briefly, what information was obtained as a result of the request of the Secretary of War and what was not obtained.

A. That visit to the office of the Capital Transit Company was on Tuesday, August 3rd, and we waited a couple of days to see whether we would get any response from them on it and we had not heard anything and I checked with Mr. Kosh and he told me

that he had not heard. So it occurred to me then that it would be appropriate that the request should be put in writing and
235 at my suggestion a letter was prepared and submitted through proper channels for the signature of the Under Secretary of War, in which the request was incorporated in writing.

Q. And what was the answer to that request?

A. And shortly afterwards a reply in writing was received from the President of the Capital Transit Company stating that the information would not be given.

Q. In reference to the other companies, commonly referred to as Virginia companies here, the other three respondents, was request made?

A. We made no oral request, but it is my understanding that letters were sent requesting certain information and that certain replies were received from two of those companies, but not from the third company.

Col. BARRON. Those will be offered as exhibits. That is all the questions I have of Captain Davis.

That is all so far as I am concerned of this witness.

Commr. PATTERSON. That is all, Captain.

(Witness excused.)

D. A. KOSH, recalled and further testified as follows:

Offers in evidence

Capt. DAVIS. I would like to offer for the record now as War and Navy Department Exhibit No. 39 ——

Commr. PATTERSON. Captain Davis, this reporter is back. I want to get these notes.

236 Capt. DAVIS. Yes, sir.

(Short interruption.)

Commr. PATTERSON. You may proceed.

Capt. DAVIS. I would like to offer this correspondence which has been referred to in my own testimony. First, a letter which I referred to, from the Under Secretary of War to the Capital Transit Company, dated August 5, 1943, and I would like to offer this as War and Navy Department Exhibit No. 39.

(War Department Exhibit 39, by counsel, marked for identification.)

Capt. DAVIS. I would to offer as War and Navy Department Exhibit No. 40, the reply of the Capital Transit Company to that letter, dated August 10th, 1943, addressed to the Under Secretary of War.

(War Department Exhibit No. 40, by counsel, marked for identification.)

Capt. DAVIS. I may state that these copies of letters were taken from the official files of the War Department.

I would like to offer next, as War and Navy Department Exhibit No. 41, a copy of a letter addressed to the Alexandria, Barcroft and Washington Transit Company, dated August 12th, 1943, signed by Colonel Barron. This identical letter was sent to the other two Virginia companies which are respondents here, that is, the Arlington and Fairfax Motor Transportation
237 Company and the Washington, Virginia and Maryland Coach Company and to avoid encumbering the record, I shall not offer copies of those because they are exactly the same.

(War Department Exhibit No. 41, by counsel, marked for identification.)

Capt. DAVIS. I would like to offer next as War and Navy Department Exhibit No. 42 a reply received from the Washington, Virginia and Maryland Coach Company, Inc., addressed to Colonel Barron, dated August 17th, 1943.

(War Department Exhibit No. 42, by counsel, marked for identification.)

Capt. DAVIS. Next, I would like to offer another reply received in response to the letter to the Washington, Virginia and Maryland Coach Company, this one from Darby and Feller, certified public accountants, dated August 16, 1943, addressed to Colonel Barron. I would like to offer that as Exhibit No. 43.

(War Department Exhibit No. 43, by counsel, marked for identification.)

Capt. DAVIS. The last of this series, I would like to offer as War and Navy Department Exhibit No. 44, copy of a letter received from Ames, Hill and Ames, dated August 17, 1943, in response to the letter to the Arlington and Fairfax Motor Transportation Company. This letter was addressed to Colonel Barron.

238 (War Department Exhibit No. 44, by counsel, marked for identification.)

Capt. DAVIS. We have received no reply to the letter addressed to the Alexandria, Barcroft and Washington Transit Company, as far as I know.

I might state that the letters of the two Virginia companies which have been submitted furnish certain information and refuse to furnish any information with respect to the income tax returns, and the Capital Transit Company letter which has been introduced in evidence as Exhibit No. 40 refuses to furnish any information concerning any income tax returns.

Mr. QUIRK. If the Commission please, apropos of Exhibit 41, is a letter from Colonel Barron to the Alexandria, Barcroft and Washington Transit Company, the task of answering that letter,

during a conference one day last week, was given to me and somehow or other the letter was mislaid and I could not find it in my file, and I simply overlooked answering it. I meant no discourtesy by it. Our position is substantially the same as that of the other respondent, but we are willing to respond to item 2 of that letter which calls for a break-down of depreciation accruals on the books of the company, subdivided, and so forth, and I now have a statement which contains that depreciation break-down.

Col. BARRON. Is that offered as an Exhibit?

239 Mr. QUIRK. And we give this to the War Department, to counsel for the War Department, subject to the right to our objecting to it on the ground of relevancy and materiality.

Capt. DAVIS. Thank you. We would like to offer this as the next exhibit, War and Navy Department Exhibit No. 45. We will have to prepare some more copies for other counsel.

It is a statement of the Alexandria, Barcroft, and Washington Transit Company which Mr. Quirk has furnished us, a copy of the property and reserve for depreciation, June 30, 1943.

(War Department Exhibit 45, by counsel, marked for identification.)

Capt. DAVIS. I move that Exhibits 39 through 45, inclusive, be received in evidence.

Mr. QUIRK. I object to Exhibit 45, on the ground that it is not relevant and material to the issues here.

Mr. PRETTYMAN. The standing objection goes to all these exhibits.

Commr. PATTERSON. The objection is overruled.

Mr. HILL. I have an objection to all the exhibits now offered.

Commr. PATTERSON. This will be included in the subsequent ruling.

Col. BARRON. I offer as the next Exhibit of the War and
240 Navy Department, 46, certified copy of the 1942 income tax return of the Capital Transit Company, dated August 10th, 1943, that is the date of certification, certified to by the Secretary of the Treasury.

Mr. PRETTYMAN. Is that offered now?

Col. BARRON. Yes, sir. I believe that under the provisions of Section 661 that the certification there is all that is necessary.

(War Department Exhibit 46, by counsel marked for identification.)

Mr. PRETTYMAN. If the Commission please, in addition to the objection, the general standing objection on the ground of the materiality of this particular document, I object to it further in that the revelation of its contents or any part thereof is protected by statute. The Internal Revenue Act provides that it will be a criminal offense for any officer or employee in the United

States to reveal the contents of any income tax return filed by any taxpayer, on file with the Commissioner of Internal Revenue.

Col. BARRON. In answer to that objection I might state, briefly, that it is usual departmental practice of the Securities and Exchange Commission to require this type of exhibit, offered in any proceeding in connection with reports of corporations.

Section 55 (a) (2) of the Internal Revenue Code provides as follows:

241 "(2) And all returns made under this chapter, subchapters A, B, C, and E, of Chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President."

And under that authority the inspection of returns is now governed by Treasury Decision No. 4929, approved by the President on 28 August 1939, and confirmed by Executive Order No. 8230 of the same date.

Section 463C.33 (a) of that Decision is as follows:

"Except as provided in Section 463C.34, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such Executive Department or other government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the

242 name and address of the taxpayer who made the return and the name and official designation of the person it is desired shall inspect the return. The information obtained under this section and Section 463C.32 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party."

The reasons were fully stated to the Secretary of the Treasury.

Mr. PRETTYMAN. The objection is still good under that statement, because there is nothing here to show anything at all as to the certification of the Secretary of the Treasury and it still remains under the showing thus far made that it is unlawful and a criminal offense to reveal the contents of these returns.

Mr. HILL. Incidentally, I do not have a copy of the Exhibit.

Capt. DAVIS. We will be glad to furnish copies of the Exhibit.

Mr. PRETTYMAN. I might suggest that before copies of this exhibit are to be furnished to persons other than officials of the Capital Transit Company, to my brethren of the bar who represent

the other respondents, that there be a ruling on the materiality of this exhibit. That exhibit is protected by statute.

Commr. PATTERSON. I think it will be received, subject
243 to objection.

(War Department Exhibit 46, by counsel, received in evidence.)

Mr. PRETTYMAN. If your Honor please—may I see the exhibit, see the nature of that?

Col. BARRON. Yes, sir.

Mr. PRETTYMAN. If your Honor please, I have to insist on this point, because there is no foundation laid for the production, there is no foundation laid for the revelation of information contained on this document. Congress has been very, very careful, it is a matter of great concern in that statute, namely, if anybody, if any governmental department anywhere can go in and simply get a certificate signed by the Chief Clerk of the Treasury Department that this is a true copy and then can reveal the contents of a tax return at a public hearing without anything further, that fact has great bearing upon the collection of revenue. Congress has been careful about that, to protect these returns by statute. Now, there is no foundation laid for the proper introduction of this document. There may be under the regulations a proper foundation to be made, but there is nothing here to show that this is admissible as evidence, nothing has been shown here, your Honor, that this is admissible. Now, I do not know if your Honor has ruled, I should like a ruling from the Commission on the point be-
cause there is a very important principle involved, the
244 opening up of this tax return to public examination upon the showing thus far made.

Capt. DAVIS. If your Honor please, the statute on public documents provides that copies of any books, writing, papers, or other documents in any of the executive departments or United States owned corporations shall be admitted in evidence in lieu of the original thereof when duly authenticated under the seal of the said departments. Now these copies have been duly authenticated. I was not sure that the objection went to that point.

Mr. PRETTYMAN. No; Congress has passed a public statute that protects this document from public inspection except under proper procedural circumstances, and the circumstances are not shown before your Honor.

Capt. DAVIS. Well, these circumstances are shown in this case, the statute says they are a public record and this is a public utility company.

Col. BARRON. This is a proceeding before a Federal body and comes within all the conditions.

Capt. DAVIS. The information was obtained upon proper request, which was made here, and may be used in any proceeding conducted by or before any department of the United States or before which the United States is a party.

Mr. PRETTYMAN. May I ask counsel to hand us a copy of the request?

245 Capt. DAVIS. I do not have the request, this is just a copy from which I read, quoting from the judicial code.

Col. BARRON. Let him have the memorandum if he wants to read it.

Commr. PATTERSON. I think, Captain, under the circumstances I will withhold ruling on that until I have had an opportunity to consult my colleagues on it, it is a rather important matter, to divulge the contents of tax returns.

Capt. DAVIS. I might state, sir, that the information used in here is the foundation for a great deal of the testimony of this witness, so unless the evidence is admitted it is a little difficult for us to proceed further with this witness.

Col. BARRON. It is necessary to use it in making up the Exhibits. I might again submit that this is ordinary routine practice for the War Department; it has been doing this before other administrative tribunals right along and never any question raised.

Mr. PRETTYMAN. If Col. Barron is going to testify, I might state——

Col. BARRON. Go right ahead.

Mr. PRETTYMAN. That I have had a great deal of experience in this particular matter, inside the government and outside the government. I have in mind the policy involved.

Exam. MATTINGLY. Well you take the position, as I
246 understand it, that the statute now, as it stands today, prohibits the introduction in a proceeding of this kind of copies of your returns; am I correct?

Mr. PRETTYMAN. Yes, your Honor; and then there is a prescribed set of circumstances covered in that order. Now nothing has been shown thus far that those circumstances have been complied with.

Commr. PATTERSON. The executive order seems to be clear enough that the information obtained may be used as evidence and it looks like on the face of it that all that is necessary to protect this evidence is to procure a certification from the Treasury Department.

Mr. PRETTYMAN. No, your Honor.

Mr. HILL. Have you examined the Exhibit, Mr. Commissioner?

Mr. PRETTYMAN. They have to have, there must be a request

by the Secretary of War detailing exactly why he wants the return.

Col. BARRON. Well, we did that.

Mr. PRETTYMAN. Which must be considered by the Secretary, and then the Secretary of the Treasury, in his discretion, and it says the secretary, not the chief clerk, he must then rule as to whether it will be furnished to heads of departments, and they too pass on the question before that return is available.

247 Col. BARRON. That has been done here.

Capt. DAVIS. We have done that here.

Mr. HILL. Where?

Capt. DAVIS. We can put those letters in, but I think they are wholly unnecessary, it is not for this Commission to determine the policy of the Secretary of the Treasury.

Mr. HILL. You mean it is unnecessary to show compliance with the statute where you must comply with the statute.

Capt. DAVIS. The Secretary of the Treasury will not certify the returns except upon proper request.

Mr. HILL. All right. I wonder. Why not show it, and see whether or not you have only compliance with the statute.

Col. BARRON. Well, that is not correct, I do not think.

Mr. WHITTLESEY. May I make this additional statement of objection as to income tax returns. I think you will take judicial notice of the fact that such income tax deductions as take for example depreciation or depletion or something of that sort is specified in the statute, and what may be a proper rate of depreciation for income tax purposes may not have any relevancy whatsoever insofar as depreciation for rate making purposes, for example, and to cite an extreme situation, under the income tax statute an oil company may take a 27 per cent deficiency deduction for income tax purposes, but for business purposes or even for rate making purposes under the Natural Gas Act that rate of depreciation is something else again.

248 I wish to make that comment because it might have some material bearing if the War Department should attempt to offer the income tax return of the Washington, Virginia and Maryland Coach Company. It might well be that a depreciation rate on certain items of equipment for rate making purposes would be entirely different under the income tax statute, and I think that should have some consideration as to your ruling on this particular exhibit, irrespective of any objection generally as to this witness' testimony.

Col. BARRON. The large purpose of submitting these returns, is to determine the amount of taxes, but there are other purposes. Certainly on the point he raises, concerning depreciation, there might be better evidence, but should statements contained in the

returns concerning depreciation be inconsistent with statements made to stockholders or to other public bodies, I think the Commision would be interested in knowing those inconsistencies. We propose to show very substantial inconsistencies.

Mr. HILL. Mr. Commissioner, before you rule on this finally, have you thus far seen the exhibit or the certification which accompanied the exhibit?

Commr. PATTERSON. The certification is on the first page of the Exhibit there.

Mr. HILL. Well, I saw that on the desk there, but I did not know that it had been handed to you.

249 Mr. PRETTYMAN. It is merely a certification that it is a true copy, is that right?

Col. BARRON. I offer at this time for identification, as Exhibit 47, copy of letter of the Secretary of War to the Secretary of Treasury. I am sorry I have just the one copy with me.

(War Department Exhibit 47, by counsel, marked for identification.)

Col. BARRON. I think it is relevant to the issue, but I offer it nevertheless if the Commission thinks it is relevant, in response to the plea that we have failed to lay a proper predicate.

Also, Mr. Commissioner, it would be almost impossible for us to put in our case unless we can get a ruling on this particular matter because so many of the other exhibits depend on it.

I desire to add that there is a further purpose for introducing this exhibit in the case of the Capital Transit Company only, which is to show very great inconsistency in the income reported as between the District Public Utilities Commission and the Internal Revenue Department.

Mr. QUIRK. Speak a little louder, please, Colonel.

Col. BARRON. I think that should be stated as an additional reason. We intend to take all of the available income data and draw what conclusions we can from it.

250 Mr. QUIRK. May we have that last statement of the Colonel, I could not hear it.

Commr. PATTERSON. The reporter will read it back.

(Record read)

Mr. PRETTYMAN. If that is the purpose of it then——

Col. BARRON. I did not say that was the purpose, I said that that is one of the purposes.

Mr. PRETTYMAN. So far as that purpose is concerned, I certainly object to it on the ground of materiality. We are not here on any charge of filing false reports.

Col. BARRON. No; I am not filing any charge of violating the revenue laws, I am just trying to get at the revenue. I do not know what you tell the stockholders.

Mr. PRETTYMAN. It is wholly immaterial, your Honor, everybody knows, taking the subject of depreciation, for example, to which Colonel Barron has referred, the Internal Revenue Department has one method and the Utilities Commission may have another method.

Col. BARRON. You will be permitted to explain that, I am sure.

Mr. PRETTYMAN. What is that?

Col. BARRON. I think you will be permitted to explain those things.

Mr. PRETTYMAN. Well, you made all these cracks about differences, and everybody knows how there are different methods of treating depreciation.

251 Col. BARRON. These are facts.

Mr. PRETTYMAN. Well, the mere question of whether they are different or not has nothing to do with this proceeding. It illustrates the difficulties that we are getting into as soon as the Commission starts——

Col. BARRON. I can see where you would object to such questions. I think you have a very good ground.

Mr. PRETTYMAN. If your Honor please, we are trying a law suit, and I think that the remarks by Colonel Barron are totally out of place.

Col. BARRON. I think it is very strange that the utility companies would refuse to the Secretary of War and Navy information of this sort, knowing the power of those two cabinet members to act officially in a question of this sort.

Mr. HILL. Your Honor, I cannot hear anything Col. Barron says, he whispers to himself.

Mr. PRETTYMAN. It is strange that the utility companies?

Col. BARRON. Yes, sir.

Mr. PRETTYMAN. Should refuse this request.

Col. BARRON. Which is in controversy.

Mr. PRETTYMAN. In view of the power of the Secretary.

Col. BARRON. Not the power, the right.

Mr. PRETTYMAN. The right of the Secretary of War

252 and Navy to do what? Let the Secretary read that.

Mr. HILL. Read that back, Mr. Reporter, I would like to hear that.

Mr. PRETTYMAN. This bring to the front——

(Record Read.)

Col. BARRON. They have a right to this information, sir, under the law.

Commr. PATTERSON. Have you seen the letter?

Mr. PRETTYMAN. Yes, sir.

Commr. PATTERSON. Mr. Prettyman, that the Secretary of War submitted to the Secretary of the Treasury for this information.

Mr. PRETTYMAN. I have seen the carbon, and I accept Col. Barron's vouching for it as being a correct copy, and I am not making that point.

Commr. PATTERSON. You still insist that they have not laid the proper foundation.

Mr. PRETTYMAN. Yes, sir; up to now they have not.

Exam. MATTINGLY. Is that because that letter fails, or is there something lacking in addition to what is there?

Mr. PRETTYMAN. Something lacking.

Exam. MATTINGLY. What is your complete point as to this matter?

Mr. PRETTYMAN. They simply have not shown that the Secretary of the Treasury in response to the request of the
253 Secretary of War has, as required by that regulation, acted in his own discretion, decided that this particular return was available, up to now that has not been shown. Now when that is shown the technical requirements are complied with.

Col. BARRON. I will offer the Treasury letter then. I only have one copy.

Exam. MATTINGLY. Well, let Mr. Prettyman look at it.

Commr. PATTERSON. Let Mr. Prettyman examine it.

Mr. PRETTYMAN. If your Honor please, the letters that have been handed me, two of them, one dated August 11th and one dated August 12th, do not lay the foundation for the introduction of these returns.

Col. BARRON. I offer that in evidence.

Mr. PRETTYMAN. They are neither signed by nor purport to be signed by the Secretary of the Treasury.

Capt. DAVIS. They are signed by the Commissioner of Internal Revenue at the direction of the Secretary of Treasury.

Mr. PRETTYMAN. This is an important ruling.

Mr. HILL. Why not by the Secretary of Labor.

Capt. DAVIS. We are offering these as Exhibits 48 and 49, respectively, 48 being the letter to the Secretary of War from the Commissioner dated August 11th.

(War Department Exhibit 48, by counsel, marked for identification.)

Commr. PATTERSON. The Tax Return was No. 46.

254 Capt. DAVIS. And as Exhibit 49, the letter of August the 12th.

(War Department Exhibit 49, by counsel, marked for identification.)

Mr. QUIRK. May I request, Mr. Commissioner, that counsel give us copies of those letters, all of them.

Col. BARRON. We will be glad to do that. We do not have them all, had not thought that it would be necessary to offer them in evidence.

Commr. PATTERSON. If Mr. Prettyman still insists that the proper foundation has not been laid for the introduction of this return, I will withhold a ruling with respect to the receipt of this evidence.

Is there anything else you can put on to take the time?

Capt. DAVIS. I think it will be helpful if Mr. Prettyman would state just in what respect the proper foundation has not been laid, do I understand that it is simply because Secretary Morgenthau did not sign the letters personally.

Mr. PRETTYMAN. If your Honor please, he is offering testimony as to which there is prescribed an official procedure for getting it in. It seems to me he should follow that. It is not up to us to dictate how he should get his evidence in, not encumbent upon us to do that, to show him how to put in his evidence. We object to the procedure as immaterial.

255 Capt. DAVIS. The procedure, as I understand it, does not require the introduction of these letters; the procedure is that they be properly certified under the seal of the Treasury Department, which has been done. The Secretary of the Treasury has other things to do besides signing formal certificates. However, the Secretary did pass upon the question of discretion involved.

Commr. PATTERSON. I will withhold the introduction of this evidence until I have consulted with my colleagues.

Col. BARRON. I just do not see how we can very well go ahead, we will be met with so many objections on everything we ask, unless they are in. I do not think we will get very far.

Mr. KETNER. Mr. Commissioner I might say that there are so many questions before your Honor that I move that the taking of evidence be postponed until you can dispose of my motions and the other motions that you have under consideration.

Commr. PATTERSON. I think that if there isn't anything more that can properly be put in at this time that we will recess until Monday morning.

Mr. QUIRK. Mr. Commissioner, could you put that over one day or two days, I had not thought that this case would take longer than this week, and I have an engagement for Monday.

Col. BARRON. We are going to tremendous expense to hold the witnesses here.

256 Mr. HILL. I am in exactly the same position that Mr. Quirk is in.

Mr. QUIRK. I am just asking one day, Tuesday, instead of Monday.

Col. BARRON. The question itself can be resolved in a short time and go on this afternoon.

Mr. PRETTYMAN. Off the record, does your Honor have in mind the question of materiality of this whole line of testimony that it will be considered by the Commission.

Commr. PATTERSON. Yes.

Mr. PRETTYMAN. If so, we should like to request an opportunity to argue the question before the Commission.

Mr. QUIRK. The question is important, it is important to the Commission because if the fare return and the financial conditions of these applicants in these abnormal times are going to be used here to show that because they are now "doing well," as the witness will undoubtedly claim or attempt to show, that they can make redemptions on particular traffic, then there is no escape from the valuation question because fare return is based on fare value.

Col. BARRON. We are prepared to go into the valuation question; we have prepared evidence for that purpose.

Mr. KETNER. I think it would be helpful if the Commission would hear argument on the motion I made, Mr. Commissioner, this is a very important matter.

257 Mr. QUIRK. I think Mr. Ketner's point is very important too, because if this case belongs properly before a joint Board all of this may be a nullity and some court might so find, later on.

Mr. HILL. Mr. Commissioner, may I ask that if there is any opportunity to argue before the Commission on some of the questions which have been raised, or the motions which have been made, that there may be included in those to be argued by motion that the Commission lacks authority to prescribe joint fares in this proceeding. I simply do not want the order so restricted that I could not argue that question if we do have an opportunity to argue.

Commr. PATTERSON. If there isn't anything more to go in I think that we will adjourn the hearing until Monday or Tuesday, one day should not make very much difference, it will have to go over until Monday anyway and I think we will resume the hearing on Tuesday morning.

Mr. QUIRK. Well, Mr. Commissioner, is this general question to be argued before the Commission, or where does that stand?

Commr. PATTERSON. Well, I do not know what the Commission's attitude will be with respect to argument. The motions and questions will all be submitted to the Commission.

Mr. QUIRK. You have not made any ruling yet so we have nothing to take up but I do not mind saying that some of

258 us feel so strongly about some of these questions that if your ruling had been adverse we would respectfully ask

for leave to argue the question, to bring it up before the entire Commission. I think in the long-run, to take the long rather than the short view of this thing, and that goes to the War Department as well, that time will be saved by having this underbrush cleared out.

Commr. PATTERSON. I think so.

Col. BARRON. I think that time will be saved by submitting the question to the Commission without a lot of long-winded arguments, all the issues are before the Commission now.

Mr. QUIRK. You do not have to have a long-winded argument.

Col. BARRON. It is going to take a long time to put in the testimony before the Commission with the objections that have been made thus far.

Mr. HILL. Could you possibly make that Wednesday instead of Tuesday. I am really caught with my tail in a crack. If you could set it over another day.

Col. BARRON. I think these are all routine matters that could be disposed of very quickly, sir.

Mr. HILL. You obviously do not know the workings of the Commission.

Col. BARRON. I do not think it is going to take them
259 very long to decide.

Mr. HILL. There is no routine matter before the Commission.

Col. BARRON. No.

Commr. PATTERSON. The Commission itself will have to determine the question as to whether or not they will hear argument. Argument has been asked for on the record and the question will be submitted to the Commission for their decision.

Mr. HILL. Well, all I had in mind, was, Mr. Commissioner, if we do go forward next week, could you fix the time for that as Wednesday rather than Tuesday in the event that the Commission ask that we go forward, requires that we go forward.

Mr. KETNER. Mr. Commissioner, I might say that if the Commission grants us argument before the full Commission we ought to have at least two days interval so as to give us time to prepare the briefs.

Col. BARRON. That is going to delay the hearing still further.

Mr. PRETTYMAN. Might I also ask, if your Honor please, that if the Commission should decide that we will be granted the opportunity for oral argument before the Commission we be given sometime, as suggested, and if the Commission should deny oral argument then that we be prepared to submit the question
and the motions, in brief, written argument, because the
260 questions have been stated at the trial table and not as fully.

I am sure, as they would be if they were made in written brief or oral argument.

Commr. PATTERSON. Your request is that if argument is denied you would like the privilege of discussing the question on briefs.

Mr. PRETTYMAN. Yes, sir. Now, in order to be helpful to Colonel Barron about the time, I might say, Colonel, that if you go into the valuation, the Capital Transit Company will have to ask for at least ninety days' opportunity to prepare a valuation, and probably much more than that.

Col. BARRON. Haven't you already prepared it for the District of Columbia Public Utilities Commission?

Mr. PRETTYMAN. We have been working on it for two months now.

Exam. MATTINGLY. We have certain matters here that are in dispute and need action by the Commission. I wonder if there is any assurance or anyway of anticipating further if as and when those questions are settled and we come back to work again some more will not pop up and the whole program will have to be repeated.

Col. BARRON. I think they are going to object very strenuously to nearly all of our evidence, as they have in the past, I have no reason to think otherwise.

Mr. PRETTYMAN. It depends on the general nature of
261 the evidence.

Exam. MATTINGLY. I wonder whether, if we go to the Commission with a part of the story and then come back and start in we will not have to go around the circuit again.

Mr. HILL. We could tell you, if we knew the nature of the evidence they propose to present.

Col. BARRON. We stated for the record this morning earlier, two or three times when we offered this exhibit, that we were going into depreciation, taxes, earnings, and all of the things that go to make up the financial structure of the utility company, which I believe is the elementary thing to do in any rate hearing and we intend to go into the valuation question very thoroughly, we have made some very comprehensive studies.

Mr. HILL. Of valuation.

Col. BARRON. I do not think that you can arrive at what a fair return is without going into all of those things.

Mr. HILL. All right, Mr. Chairman, I assure you there will be constant objections.

Mr. WHITTLESEY. That will be true so far as we are concerned.

Exam. MATTINGLY. That would go to the same general objection.

Mr. HILL. Now, if there is anything additional, we would
262 be glad to know of it and perhaps can tell whether it will be objectionable or not in our opinion if the proper foundation is laid.

Col. BARRON. It seems to me that what we propose is fairly covered by the order, we have always done it in utilities hearings.

Mr. QUIRK. Well, the order deals with the issues and we are here dealing with what kind of evidence is relevant, and relevant to those issues, and it is quite obvious from what has been said here this morning that the theory of the other side is that if they show what these particular companies are showing earnings in excess of what they claim to be fair earnings on this traffic which represents a very small portion of the whole, that such a return is illegal, then we have a big question.

Commr. PATTERSON. We are not in a position to proceed at this time and we will recess until 9:30 Wednesday morning.

Mr. HILL. Thank you your Honor.

(Whereupon, at 12:00 noon, Friday, August 20, 1943, an adjournment was taken to Wednesday, August 25, 1943, at 9:30 o'clock a. m.)

263 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B",
INTERSTATE COMMERCE COMMISSION BLDG.
Washington, D. C., Wednesday, August 25, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances: As heretofore noted, with addition of Capt. Paul S. Davis, War Department, Washington, D. C., representing the Secretary of War and the Secretary of the Navy; Lt. Everett A. Mathews and John H. Ferguson, Room 2206, Navy Bldg., Washington, D. C., representing the Secretary of the Navy.

263 PROCEEDINGS

Commr. PATTERSON. Please come to order, gentlemen.

The State Corporation Commission of Virginia made a motion that the proceedings be discontinued because the Commission was without jurisdiction in the premises.

The ruling with respect to this question is that the question will be deferred for the present and dealt with in the light of the facts developed of record.

An alternate motion was made that the proceedings be referred to a Joint Board. That motion is overruled.

The question of oral argument or opportunity to file briefs upon the admissibility of evidence is denied.

The Commission did not take formal action with reference to the admission of specific evidence. I did discuss this matter with my colleagues, however, and I am now prepared to rule that in view of the limited scope of this proceedings, only such evidence as has a reasonably direct bearing upon the particular services with which we are here concerned will be admitted.

This means, that, in general, evidence as to the financial condition and control and valuation and rate of return and kindred subjects concerning the entire operation of each of the several respondents will be considered as irrelevant and immaterial to the present inquiry and will not be admitted.

Whether any particular item of evidence will be admitted will be determined when it is offered in accordance with the principle announced.

266

You may proceed.

Col. BARRON. Do we understand by that, that we cannot introduce evidence as to their physical values, their financial operations, or their income?

Commr. PATTERSON. Only as it may be related to the particular services involved in this proceeding.

Col. BARRON. Of course, I don't get fully just the import of that. Of course all of this line of evidence relates to the services they are rendering, in the District of Columbia and the four installations of the War and Navy Departments and naturally it is all, of course, vital from our standpoint. I don't understand the effect of the ruling.

Commr. PATTERSON. You may proceed.

Col. BARRON. We had Mr. Kosh on the stand when we adjourned and at that time we had presented the income tax return for the year 1942 of the Capital Transit Company and we renew our offer of that exhibit at this time so that we can proceed with the other line of exhibits.

Commr. PATTERSON. Can you separate the various schedules in this tax return that you care to use?

Col. BARRON. I don't quite follow you, sir.

Commr. PATTERSON. In this income tax return there are various schedules that are enumerated. Do you propose to use the whole tax return?

267

Col. BARRON. Yes. This affects the entire operation. They operate into Virginia from all over the District, you know.

Mr. QUIRK. Mr. Commissioner, may I make this one observation: If the theory on which Col. Barron is proceeding is correct, and if any of these respondents should happen to have a deficit, instead of a net return, then it would follow that they could select the employees of the Pentagon Building for a particular increase in rate in order to offset that deficit. The mere statement of that shows that his position is unsound.

Mr. PRETTYMAN. In view of the renewal of the offer of the income tax return, I renew the objection on the ground that it is wholly immaterial under the ruling that Your Honor has just announced, unless Col. Barron can specify in what respects this general over-all data relates to this particular operation.

The income tax return, of course, includes the first item, gross revenues from all operations, street cars as well as busses, and all District operations, and Maryland operations, and so on through the return.

Now, Col. Barron has not specified yet what items on the return he expects to relate directly to this operation, and on that
268 basis I renew the objection since he has renewed the offer.

Capt. DAVIS. If your Honors please, in our opinion all of the material in this income tax return are relevant to the purposes of this proceeding.

As Your Honor knows, the Commission's order calls for an inquiry into the lawfulness of the rates charged from all points within the District of Columbia to these four installations.

Now, in order to determine the reasonableness of those rates it is obviously necessary to consider what the return of the company is, as a result of the present rates which are now being charged.

Now, as a matter of fact, our office requested the Capital Transit Company to furnish a breakdown of the income and expenses by separate lines, and it has not been furnished, but whether it is furnished or not, as a preliminary basis for a complete inquiry into the subject matter of this proceeding we feel it is absolutely necessary to have in evidence the facts concerning the financial operations of this company.

The income tax return is a document sworn to by officials of this company. We assume it is taken from the books and I assume if it is not taken from the books the company can produce evidence of what the books show, to the extent the books are inconsistent with the income tax return.

269 I assume that Your Honors are fairly familiar with the form of the return. On the first page it has a statement of the income of the company, and computation of the tax, and it contains schedules and computations showing the income in detail, including the revenue from transportation and other income and it goes on to show the deductions and various taxes, license

fees paid, and it contains the reconciliation of the income as shown in the income tax return and the income as shown per books according to the return, and as counsel for the company pointed out the other day, there are substantial differences between the income as shown in this income tax return and the income per books.

We believe the Commission should know about these differences, and that counsel for the company should have a full opportunity to explain these discrepancies.

It goes on to set forth a schedule of the salaries paid to the officers of the Capital Transit Company, and we believe that is obviously material in showing these officers are getting large salaries while they are charging high rates to people of small incomes.

Col. BARRON. And large salaries are being paid to holding company officials, based on income from the District of Columbia operations.

Mr. HILL. The fact alone of the inclusion of the figures unsegregated regarding street cars damns the whole
270 exhibit.

Commr. PATTERSON. What proportion of the entire business of the Capital Traction Company is involved in this proceeding?

Col. BARRON. We can't tell. We have moved the Commission to require that information. There is a pending motion before Your Honor.

Capt. DAVIS. From what we understand, the passengers ride from all points within the District of Columbia, so that we assume that practically all of the operations of the Capital Transit Company are necessarily involved in this proceeding.

Mr. PRETTYMAN. Are all of the operations of the Capital Transit Company involved in this proceeding?

Capt. DAVIS. In view of the fact that passengers ride from practically all points in the District to these four installations, and so in order to determine the fair and reasonable rate from these points it is obviously necessary to consider the revenues and operations of all of these lines.

Mr. PRETTYMAN. I understood that the Commission had ruled on that particular point.

Commr. PATTERSON. If a bus, for instance, started from Chevy Chase with 40 passengers in the bus, and one passenger finally is destined to the Pentagon Building, would
271 the operation of the entire bus be charged to the service involved here?

Capt. DAVIS. Not the entire operation, but a proportion of them, sir.

Commr. PATTERSON. One-fortieth in that case.

Capt. DAVIS. Of course, it would be a lot more in other cases but in order to determine how much of that expense should be charged to these operations, as we see it it is obviously necessary to consider those operations. Now, if it is impossible, as it may well be, to segregate exactly the proportion of operations on particular lines chargeable to these particular passengers, then we submit it is essential to consider it as an over-all operation, particularly in view of the fact that from other points a uniform fare is paid, whether the passenger rides one mile or 15 miles within the District of Columbia.

It is our position, as we have stated, that these installations just across the boundary line should for practical purposes be treated as part of the District for rate-making purposes.

Mr. QUIRK. Mr. Commissioner, speaking for the A. B. & W. Company, we will show at the appropriate time that our revenues from this particular operation, that is on passengers from the District of Columbia to these four points, we happen to be one company that serves the four points in Virginia, is
272 15 per cent of our total operation, and the 85 per cent comes from intrastate operation and all of our other operations.

Mr. PRETTYMAN. The Capital Transit Company made some inquiry about the proportion and the revenue from the Pentagon line is about one per cent of our revenues, our total revenues.

Col. BARRON. I think if we are required to show the effect of various rates from the District and other points to various buildings, that we will have to show that they are not confiscatory. And we will have to show the income of the companies in order to do that. That is in order to show the reasonableness of our suggestions.

Commr. PATTERSON. Well, would the respondents be willing to stipulate, or the Capital Traction Company, that even if they absorbed this excess expense that it still would not be confiscatory under present conditions?

Mr. PRETTYMAN. I would have to consult, if you will allow me a moment.

Mr. QUIRK. Mr. Commissioner, I don't want to seem to be talking all the time but Col. Barron in his letter addressed to you the other day and his statements made here this morning, and the general position taken, is that if the earnings of these com-
273 panies severally treated are such that any one of the proposals that they have made for change in fares should be established, the reduction in the revenue from that decrease in the fare would still leave the companies with a fair profit.

Now, that is the theory that is unsound. It works both ways. If that theory is sound, then if we had a deficit, we could single

these particular employees out and charge them with increased fares and let all of the other users of the company go scot free.

Mr. HILL. Under this theory, we could charge the higher salaried employees only the extra fare.

Capt. DAVIS. In answer to Mr. Quirk's suggestion, I think that he misunderstands our position. We take the position that these fares are now discriminatory against these particular people who travel to these Virginia installations, or wherever the installations are. Perhaps they are in the District.

In other words, we feel that those installations should be given the benefit of the District fare.

Commr. PATTERSON. You mean that they are discriminatory as compared with passengers that ride to Chevy Chase Lake, for instance?

Capt. DAVIS. Who ride to other points within the District, a passenger who rides from Chevy Chase to the Navy Yard
274 probably goes farther than the Pentagon and yet he pays one fare, whereas the man who rides to the Pentagon pays two fares.

Commr. PATTERSON. Is it your position that the Pentagon Building is within the District?

Capt. DAVIS. We are not necessarily taking a position on that but we do take the position that it is so close to the District Line that whether it is within the District or not it should be considered as part of the District for fare purposes, and the mere fact that the political boundary should be at a certain point should not affect the economic substance of the thing, which is that from an economic standpoint these installations should be treated as part of the District, and the failure to treat them as part of the District is discrimination against the riders to those points.

Commr. PATTERSON. Would that be discrimination as against the passenger who rides half a mile beyond Chevy Chase Circle?

Capt. DAVIS. We consider that that is a different situation, sir, because the area beyond Chevy Chase Circle is primarily a residential area, and is more or less suburban territory, whereas this is definitely office and business travel and should be considered like other installations where people work.

Col. BARRON. We don't contend that there is not discrim-
275 ination in other places, but of course the Secretary asked that this proceeding be instituted because the primary concern of the Department is with these installations. We are not going into the broader aspects of the thing at all.

Commr. PATTERSON. I am trying to get an understanding of what you mean by discrimination.

Mr. QUIRK. On that question of discrimination, Mr. Commissioner, again speaking for the A. B. & W. Company, we are required in so far as we do any intra-District of Columbia business, to maintain the rate of 10 cents by an order of the Public Utilities Commission of the District.

Our rate between the District and Virginia points is not more than 10 cents and we have a book that makes it around 7½ cents.

Now, of course, we are not responsible for what other companies do, and there can be no discrimination in the legal sense against the A. B. & W. because some other company may not do or may fail to do something else.

There is no basis for discrimination with respect to my company, at least.

Commr. PATTERSON. Then your company charges now a 10 cent fare for a ride to the Pentagon Building from the District in which under certain circumstances the Capital Traction Company charges a nickel.

Mr. QUIRK. We charge 10 cents within the District, too,
276 and so far as we have a right to take passengers within the District points, and we do have that right to a limited extent, so the point I am making is that we don't charge any less, if that is their theory of discrimination, to cross the State line into Virginia, than we charge and are allowed to charge within the District of Columbia.

Col. BARRON. It is our understanding that they charge two fares if they go into Virginia.

Mr. QUIRK. We do not.

Mr. WHITTLESEY. I was under the impression that this was an inquiry into whether the rates were excessive and unreasonable, and that is an entirely different proposition from a question of whether the rates are discriminatory.

Now, I do not think that we have been properly put on notice that there is discrimination.

With regard to that question, I might point out that that is exactly what the War Department is seeking to set up here, is a preferential rate for a certain class of people. In other words, they are seeking a discrimination in their favor.

Capt. DAVIS. Continuing with this income tax return which has been marked for identification as War and Navy Department Exhibit No. 46, it proceeds to show a balance sheet setting forth the assets and liabilities as sworn to by the officials of this company, and that continues with Schedule No. 4, which is an analysis of changes in surplus, showing certain sustantial profits, and
277 it then sets forth the schedule of depreciation, setting forth the depreciable base as reported to the federal government, and I might say that this is substantially different from the base of depreciation used by the company in its annual report.

Mr. PRETTYMAN. Is he describing the exhibit?

Capt. DAVIS. To which objection has been made.

Mr. PRETTYMAN. But you are also adding a little testimony as we go along.

Capt. DAVIS. I am describing the exhibit. You will have a chance to comment on it. This is open for the inspection of all parties.

Mr. HILL. Where do you see the difference shown in there as between that and the figures on file with the P. U. C., that is testimony and not under oath.

Capt. DAVIS. It shows a depreciable base.

Mr. HILL. One depreciable base in there, does it not, and not the one with the P. U. C. as you testified.

Capt. DAVIS. It shows a depreciable base of $31,000,000.

Mr. LANE. Is that testimony or not?

Capt. DAVIS. Counsel asked me what the exhibit shows.

Mr. HILL. Does it show it?

Col. BARRON. Might I suggest, Your Honor, that we not be required to answer all counsel on all questions? This only concerns the Capital Transit Company and it is difficult enough.

278 Mr. Hill. We are vitally interested in the result to the Capital Transit as well as any other respondent.

Mr. PRETTYMAN. Since counsel has seen fit to interject some general comment on a difference between this return and the report to the Public Utilities Commission, I will ask him to turn to the reconciliation, between the books and the return, and read to the Commissioner the depreciation set up on the books as shown in the report to the Public Utilities Commission; read that figure.

Capt. DAVIS. The accrual for depreciation is——

Mr. PRETTYMAN. Read the accrual per books.

Capt. DAVIS. I am not raising a question about there being a substantial difference there. I am talking about the depreciation base.

Mr. PRETTYMAN. You made the statement that there was a substantial difference in the depreciation base, intimating that there was a substantial difference in the depreciation.

Capt. DAVIS. I made no intimation on accrual.

Mr. PRETTYMAN. I asked you to make a comment; I asked you to read the figures shown on the exhibit in your hand, as depreciation per books; read that one figure.

Capt. DAVIS. I am also going to read some more figures. The depreciation set up on the books, according to the reconciliation, is $2,144,930.70.

Mr. PRETTYMAN. Read the depreciation taken on the

279 return.

Capt. DAVIS. That is $2,145,720.89.

Mr. PRETTYMAN. What is the difference between those two figures?

Capt. DAVIS. It is a small amount and I am not arguing about that.

Mr. PRETTYMAN. Something like $3,000 difference, out of a deduction of $2,100,000.

Capt. DAVIS. That is not the issue here.

Mr. PRETTYMAN. You commented, Captain Davis, on the difference, intimating that the Capital Transit Company was doing something different in two places.

Now, the fact is, as shown by the exhibit which you then had in your hand, that there was a difference between depreciation per books as reported to the Public Utilities Commission and the depreciation accrued on the income tax return of something like $3,000 out of a deduction of $1,144,000.

I think that we ought to keep the facts straight.

Capt. DAVIS. I was not questioning that. However, the depreciation base, sir, which is shown on this return as approximately $31,000,000, is very substantially different from the amounts of net property shown in the books of this concern, and we believe that that depreciation base as reported to the federal government is something that should be given by this Commission serious consideration in deciding what the fair value of the company's property is.

280

Mr. DUNLOP. What does the depreciation base in the return have to do with the base fixed by the Public Utilities Commission for fair value?

Capt. DAVIS. The depreciation base in your return——

Mr. DUNLOP. What evidence has it to do with fair value?

Capt. DAVIS. It has a lot to do with it, in our opinion, as I just stated, because this is what you report to the federal government as the value of your property in fixing depreciation, whereas your report is something else to the Public Utilities Commission of the District, and we think that this Commission should have these figures and have an opportunity to judge what the facts are.

Mr. DUNLOP. Don't you know that the Public Utilities Commission does not consider that figure given in the income tax return for rate-making purposes?

Capt. DAVIS. We are before this Commission now, and it is for this Commission to decide what should be considered in this proceeding in fixing fair and reasonable rates for these employees.

Mr. PRETTYMAN. Doesn't a depreciation base for income tax return, include everything of March 31 value, and everything on hand before that date?

Capt. DAVIS. There may be certain small adjustments, but nevertheless the fact that certain figures are reported

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to the federal government is of considerable significance in our opinion and should be considered by this Commission.

Col. BARRON. We have, of course, expert witnesses to discuss all of these questions.

Commr. PATTERSON. I realize that but the Commission is not interested in this proceeding in the total value of the Capital Transit Company.

Col. BARRON. Of course we have pending at this time the question of the introduction of the exhibit.

Commr. PATTERSON. There is no showing that has been made that you propose to break it down to cover this particular service, and on that basis the objection is sustained.

Col. BARRON. Your Honor, we filed a petition here for a subpoena duces tecum to require the company to make a breakdown. It is the only concern that I know of that can make it properly, from its own books, and it has that information within its knowledge, and it knows what its operating expenses are on these different lines, and what its income is.

Your Commission has not acted yet, so far as I know, on that motion or that petition, and to put that kind of a burden in time of war on the War and Navy Departments, to try to get in-
282 formation of this type, we think the burden is elsewhere and we have so moved.

Commr. PATTERSON. The company have not replied yet to that petition for information and I don't know what their position is with respect to that particular subpoena.

Col. BARRON. Of course, when you say you do not want to consider their whole income, I think that you have got to consider their whole income even to make any calculation at all as to what the income from specific operations is. I don't see how we can proceed any further without it.

Commr. PATTERSON. Would the counsel for the Capital Traction Company care to express his views as to what they can furnish with respect to this, and what they are willing to furnish?

Mr. PRETTYMAN. If your Honor please, I have in my hand the petition requesting the Commission to require the respondents to produce certain documentary evidence.

Now, that alleged documentary evidence is in paragraph 6 of the petition, divided into paragraphs A, B, C, D, E, and F.

The first general observation is that there are no such documents, so that the petition, in asking for a subpoena duces tecum, does not describe any existing documents, but treating the petition as though it were a request for information, we say that as to "A," a breakdown of the figure of $2,500,000 federal income taxes
283 shown in the annual report, showing a division of that amount as between normal taxes, surtaxes, and excess profits

taxes, and as between the Capital Transit Company and its subsidiaries, is wholly immaterial. There is not any possible bearing that that could have on this particular proceeding.

"B," a similar break-down of the comparable figure, the income statement by the Capital Transit Company for the first six months of 1943. The same applies.

"C," is the amounts of income taxes reported in its tax returns broken down as between normal taxes, surtaxes, and excess profits taxes, together with statement of the amount of invested capital used as a basis for the determination; and our objection to that is exactly as our objection was to the income tax returns as a whole, namely, that they are wholly immaterial to any issue in this case and furthermore the proper foundation has not been laid for the introduction of those returns in any event.

The break-down of the depreciation accruals on the books of the Capital Transit Company, as between busses, street cars, and other property, respective rates of depreciation used for each class of property, in reply to that we say that as to street cars and as to other property which is not related to this operation the request is immaterial, and as to busses we have it and we will be glad to show that.

"E," a statement showing revenues and net income de-
284 rived from the operations for each of the following lines of the Capital Traction Company for the years 1941, 1942, and 1943, describing the two Pentagon Building lines, our reply is that the lines were not in operation for the year 1941, and for the years 1942 and 1943 we do not have the complete data, that we do not have any data as between the two lines for the set-up, that is separating between these two operations but we do have for the two lines together the material set-up for three months in the spring of this year, and we have that in shape and we will be glad to furnish it.

"F," a separate statement showing the same information concerning revenues derived from the operations of all other lines of the companies, within the District of Columbia, and adjacent terminals, and we say in the first place that that is immaterial and in the second place, if he means each separate line we don't have any such material; it just happens that the only reason we have the material on the Pentagon operation is that it is a special, peculiar operation.

Capt. DAVIS. May we be heard briefly on that, Your Honor?

Commr. PATTERSON. Yes.

Capt. DAVIS. So far as A, B, and C are concerned, we believe
285 that we have covered that in our discussion of this proposed offer. We believe it is very important to show the overall income of this company because otherwise we can't tell

whether a reduction here will impair the fair rate of return of these companies.

We believe it is very important to show that they are earning an excessive rate of return at the present time.

Commr. PATTERSON. On their property as a whole?

Capt. DAVIS. Yes.

Now, as far as "D" is concerned, on the break-down of depreciation accruals, we believe it is important to break-down the figure which is given in the lump sum on the books so that we will know how much of it is apportionable to these various types of operations.

We are glad to know that the company is willing to furnish some statement on "E." This is the first time that they have indicated that they could furnish anything on that.

Of course, in order to have some check on that, as to whether the income is properly apportioned to these particular lines, it is obviously necessary to know what their income is for other lines, and what it is for similar lines, so that there again in order to have a complete story on "E" which concerns the operation of these particular lines, we have got to have the story on the operations of the rest of the lines.

Now, in "F" we have asked for a statement of revenues
286 and expenses for other lines. As we pointed out, that is essential, in order to determine the reasonableness of a through rate for a passenger who travels from some other part of the District.

The company says that they don't have separate accounts for these different lines, and in view of that it indicates again that we have to consider the over-all operations of this company in order to decide what a fair rate is for a through trip from Chevy Chase or some other part of the District to these installations.

We submit again that all of this information is relevant and material and we believe this income tax return offered as Exhibit No. 46 is relevant and material for the same reasons and it is essential that this Commission have it and consider it in this record.

Commr. PATTERSON. I think in view of the showing that has been made, that the objection with respect to the introduction of the income-tax return is sustained.

With respect to the Item "E" in the petition requesting certain information, with respect to the information that Mr. Prettyman has said that they voluntarily will furnish, and the information which he says they will voluntarily furnish with respect to Item E is about all that we can reasonably expect. That information will be furnished.

Capt. DAVIS. Your Honor, may we preserve an exception
287 to Your Honor's ruling?

Now, Your Honor inquired of counsel for the company whether they would be willing to stipulate concerning the effect of a non-discriminatory treatment here, and as to whether that would impair the fair rate of return. Does Your Honor want to inquire whether that stipulation is to be entered into?

Mr. PRETTYMAN. As we understand it, Your Honor, the question of confiscation is not involved in this proceeding and thus far the company has not made the point or suggested it, and I am not in a position at a moment to stipulate whether this would be or would not be confiscatory.

As Your Honor knows, the Public Utilities Commission has under way an inquiry in the District of Columbia to determine the fair value of all of the property of the company, to determine various matters in respect to the deductions from revenues and to determine the fair rate of return. The questions of deferred maintenance and all of that sort of thing will arise in that proceeding and the company does not know at the present time. We have been for a couple of months working on these various studies, but we don't know at the moment and probably won't know until we get through that proceeding what the situation is there.

If the Commission finds that such and such a rate is a fair rate, why then the answer would be one way and if they
288 found something else, it would be another way.

Now, up to the present moment the companies have not raised any question as to the confiscatory nature of these fares or of any particular proposal and it seems to me that until some of us raise the question that it would be confiscatory, we should not be necessarily required to state.

Commr. PATTERSON. We can assume that it would not be confiscatory, even if you absorbed the entire additional cost of the Pentagon Building.

Mr. PRETTYMAN. Without our acquiescence, if the Commission should assume that, if it became our desire to make the point, I think it would be incumbent upon us then to raise the question but we have not raised that question at all and being advised that the Commission will proceed upon that assumption we have nothing to say at the present time.

Capt. DAVIS. I assume the reason they have not raised the objection is because we are instructed under Your Honor's ruling and the ruling of the Commission to put on our evidence first and we assume that it is an essential part of our case if we have to proceed first, to show that the reduction which we claim should be made, will not reduce the company's revenues below a fair rate of return and of course if they are willing to concede that this reduction may properly be made I assume that there is no further

purpose in the proceeding and they can file an amended
289 schedule showing through rates to these installations as to other points in the District, at the same fares, but so far they have not done that and they have apparently contested our views.

I think unless they are willing to concede that, then it is absolutely essential that we go into this question.

Commr. PATTERSON. You may proceed.

Col. BARRON. Your Honor's ruling on the introduction of fiscal evidence——

Commr. PATTERSON. That is showing the Capital Transit Company as a whole.

Col. BARRON. We assume it will extend to the other companies, it practically bars our entire line of evidence of that type and I at this time respectfully again urge that this line of evidence in this or some other form be submitted to the full Commission.

If Your Honor does not see fit to do that, I urge that we be given a recess of two days so that the matter may be submitted to our superiors, the Secretaries of War and Navy, and I do not think that we can get anywhere with the hearing.

You have narrowed the scope from our standpoint of the hearing far beyond the delineations of the order, the order envisioned a full hearing in these matters, and we can't make a case without going into that.

Commr. PATTERSON. Now is the time for you to put that
290 petition in writing and give the parties an opportunity to reply.

Col. BARRON. I did not quite catch that.

Commr. PATTERSON. Put your petition in writing, your appeal to the Commission.

Col. BARRON. I appeal specifically and I don't want to proceed further until they pass on it.

Commr. PATTERSON. If you will put that petition in writing and give the parties an opportunity to reply——

Col. BARRON (interposing). We will be glad to do that and file it today.

Commr. PATTERSON. How long would it take to reply to a petition of that kind? Would five days be sufficient?

Mr. QUIRK. I think so. I think that we can do that. Ten days is provided in the rules but we are not disposed to insist on it.

Commr. PATTERSON. If you will get your petition in today, would a week be sufficient?

Col. BARRON. I should think five days would be enough, if we have to write a petition in two or three hours, certainly they should not require too much time.

Mr. HILL. We are not asking the Colonel to write his petition in two or three hours. That is your proposal and not our insistance.

Comm. PATTERSON. I think the replies will be due next
291 Monday if the Commission's copy is filed today.

Mr. QUIRK. There is a Sunday intervening there, and I don't mind working on Sunday but Colonel, are you going to get that to us? You can't get it to us before the end of the day.

Col. BARRON. No, sir. We will deliver it to your offices.

Commr. PATTERSON. I think that that is a little tight; we will make it Tuesday.

Col. BARRON. Do I understand that we will be back here at 9:30 Tuesday, then?

Commr. PATTERSON. No; the replies to your petition will be due Tuesday, after which the Commission will consider the petition and the replies.

Mr. QUIRK. Am I correct in understanding——

Commr. PATTERSON. Then a new date will have to be assigned for further hearing.

Mr. QUIRK. Am I correct in understanding—perhaps I can address this to Col. Barron, that his petition is in the matter of an appeal from the ruling made by the Commissioner this morning, on this question of evidence dealing with the over-all operations?

Commr. PATTERSON. That is right.

Col. BARRON. That is right.

Mr. HILL. May I ask that when the time arrives, for
292 the setting of the continued hearing, that if possible some opportunity be given us informally to try to fix a day that will accommodate all of us. I know that Mr. Quirk is tied up all during the month of September and I am rather badly tied up too, at times, and you will probably catch some of us out of the city unless we are given some opportunity to talk it over a little with you or with the Examiner.

Commr. PATTERSON. We will try to fix a date that will be satisfactory to all parties.

Mr. HILL. I don't ask the impossible, of course, but I would like an opportunity to say when would be the best time with my present engagements.

Exam. MATTINGLY. We will try and communicate with both sides and try and set a date that will be satisfactory to everybody.

Col. BARRON. One of the attorneys here representing the Secretary of the Navy wants to enter a separate appearance, so that he will be sure and get copies of all of these notices.

Lt. MATHEWS. Lieutenant Mathews, Office of the Under Secretary of the Navy, Room 2206, Navy Building.

Commr. PATTERSON. File an appearance slip with the reporter.

Col. BARRON. At this time I desire, before we recess,
293 I would like to substitute for the originals, copies of the exhibits introduced at the last session.

One of them is a letter of the Secretary of War, Exhibit 47, addressed to the Secretary of the Treasury, dated August 9, 1943, signed by Secretary Stimson.

We introduced as Exhibits 48 and 49 the replies of the Treasury Department to the Secretary of War. One of them is dated August 11, 1943, and the other August 12, 1943, and they include 48 and 49.

Mr. LANE. May I ask what this other exhibit number was?

Exam. MATTINGLY. The letter of August 9, that is 47. Col. Barron, the letter of August 11, is that No. 48?

Col. BARRON. Yes; and August 12 is 49.

Capt. DAVIS. If Your Honor please, there were some small typographical errors discovered in Exhibit 16 which Capt. Loughran introduced and we would like to ask leave to substitute a corrected copy and distribute copies to counsel, if we may.

Mr. PRETTYMAN. Well, can't we just have this go in without destroying physically the old, because we have no idea what the changes are.

Capt. DAVIS. We have no objection to that although Captain Loughran can explain what they are.

Exam. MATTINGLY. Let Captain Loughran explain. He
294 has already been sworn.

Capt. JAMES E. LOUGHRAN previously sworn, testified as follows:

DIRECT EXAMINATION

The WITNESS. The revised table effects corrections of typographical errors or errors in addition which appear on the Exhibit 16 as introduced.

For example, in the section devoted to A. B. & W., District to Virginia, in the column headed "Leave," the sixth item, 168, and should be "68" and so appears on the revised table.

A correction from 168 to 68. That is an error made by the typist.

The other errors are similar in nature. I can detail or describe each one in detail if the Commissioner desires but they are of that nature and do not affect substantially the totals for any portion of the table.

Exam. MATTINGLY. Do you see any reason why they should not both stay in?

Mr. HILL. I think so. We have already examined the exhibit and now we would like——

Exam. MATTINGLY. We will number this one as Exhibit 16–A. The corrected exhibit will be 16–A.

(War-Navy Exhibit 16–A, Witness Loughran, received in evidence.)

295 Col. BARRON. Captain Laxton of the Marine Corps started to testify concerning the exhibit which contained some inaccuracies, which we later withdrew and stated that we would later substitute another exhibit. He is here, and we would be glad at this time in order to fill in that gap to offer that substitute exhibit by the Captain.

Capt. W. C. LAXTON previously sworn, testified as follows:

DIRECT EXAMINATION

Exam. MATTINGLY. What was the original number of that exhibit?

Capt. DAVIS. It was Exhibit 38. I believe that we physically withdrew the other one.

By Col. BARRON:

Q. I show you an exhibit headed, "Headquarters, United States Marine Corps, Washington." It is captioned:

"Average Salaries Received at Various Levels."

I ask if you can identify that as a document that you prepared or one prepared under your supervision?

A. This table, sir, was prepared under my supervision.

Col. BARRON. I offer that at this time, in evidence, as Exhibit 38, War and Navy Department Exhibit 38.

Commr. PATTERSON. Is this a substitute for Exhibit 38?

Col. BARRON. Yes; to bear the same number.

Exam. MATTINGLY. Was that 38 physically withdrawn or

296 what is the status with respect to that?

Commr. PATTERSON. I think that we left it at the time that a substitute exhibit would be submitted but in the meantime the original exhibit was physically retained.

Mr. QUIRK. It seems to me that the other exhibit ought to stay in with the idea that this is offered in substitution for it and given another number.

Col. BARRON. It does not make any difference to us.

Exam. MATTINGLY. We just want to find out what the situation is with respect to the other one on the record, please.

Capt. DAVIS. The record indicates that Col. Barron stated that the exhibit would be rechecked and we would substitute another exhibit if that was all right.

That is on page 210 of the transcript.

Mr. Hill said, since the exhibit may not be here at that time may I ask a question at this time.

Mr. PRETTYMAN. On page 210, it says:

Commr. PATTERSON. I think that the exhibit should be entirely rechecked, and if that is satisfactory, the exhibit will be taken back and rechecked. And Col. Barron said that that was all right.

Mr. LANE (reading).

"Col. BARRON. We will have that rechecked and substitute
297 another exhibit for this number, if it is all right, we will let this stay in and substitute it later."

Mr. MATTINGLY. Apparently Exhibit 38 is in, so let us number this new one 38–A as a correction of No. 38.

(Army-Navy Exhibit 38–A, Witness Laxton, received in evidence.)

By Col. BARRON:

Q. Have you rechecked your figures since the time of the last hearing with reference to this exhibit?

A. Yes, sir.

Q. What inaccuracies, if any, did you discover in your recheck?

A. I found a number of errors in computation, sir. There were no errors in basic data but in computing these various columns here there had been a number of mathematical errors.

Q. State what they are there: Start with your first one.

A. Sir, I did not bring the corrected copy with me. I left that at the office. I think that I can indicate most of them.

The second line from the top was in error practically all the way across. The basic salary of $1,440 and the size of the sample, 69, is correct. The other data shown in that line was in error in the computations.

Mr. HILL. Aren't you looking at the wrong place?

The WITNESS. The third line.

298 Mr. HILL. Then it should be "35" instead of "69."

The WITNESS. The size of the sample was 35; yes, sir. Then there were a number of errors, sir, and I could not check them without having the corrected copy with me.

Mr. FERGUSON. You have that one there.

The WITNESS. The third line, the $1,620 basic salary, were 35 samples. The gross earnings were in error, the withholding tax, the retirement deductions, the bond deductions, the total deductions and net amount paid. They were in error.

In the next to the last column, on the fourth line, there was a one-cent error. The original table indicated $22.96 and the recheck shows $22.97.

Under the $1,860 basic salary, with three samples, the gross earning column indicated on the original exhibit $94.28. The corrected copy indicates $94.29.

In the $1,920 basic salary column, the original table showed under the retirement deduction column, $3.88, and the corrected copy shows $4 and under the total deductions there is a change from $24.08 in the original to $21.70 in the corrected copy, and a change in the net amount paid from $73.25 to $75.63.

By Mr. LANE:

Q. May I just ask you, you gave that $1,860. Is *Is* that the one that you are talking about?

A. Yes, sir.

299 Q. And you said that the $3.88 figure had been corrected?

A. No.

I am getting mixed up, sir, and I will have it right now here, with a guide.

It is the $1,920 column.

Q. You said the $3.88 figure was corrected.

A. Yes, under retirement deductions, it was corrected to $4 and the total deductions of $24.08 were corrected to $21.70. That is with a correction in the last column, the net amount paid, from $73.25 to $75.63.

The next line, the $1,980 basic salary, the retirement deductions have been corrected from $4 to $4.13. The total deductions from $25.70 to $25.83, and the net amount paid from $74.67 to $74.54.

The next line, salary of $2,000, the gross earnings have been corrected from $101.30 to $101.38 and the total amount paid from $76.45 to $76.52.

In the $2,300 column, the gross earnings have been corrected from $108.08 to $116.59, and the total deductions from $23.49 to $23.48, and the total paid from $83.10 to $93.11.

In the $2,600 column, or line, gross earnings have been corrected from $219.67 to $131.80. The withholding tax has been corrected from $34.67 to $14.67, and the retirement deductions have

300 been corrected from $9.03 to $5.42, and the total deductions have been corrected from $55.99 to $32.38 and the total amount paid has been corrected from $163.67 to $99.42.

I believe, sir, that that completes the corrections.

By Capt. DAVIS:

Q. Now, as these figures are corrected in Exhibit 38–A, are they correct now?

A. They have been double checked, sir, all the way through, both on the machine and manually.

Capt. DAVIS. That is all.

Mr. QUIRK. Has it been offered?

I object to it on the ground it is immaterial and irrelevant.

Exam. MATTINGLY. That is overruled. The exhibit is received as 38–A.

(War-Navy Exhibit 38-A. Witness Laxton, received in evidence.)

Exam. MATTINGLY. In this petition that you are going to make to the Commission, I assume that it will be directed specifically to the presentation and refusal of the Commission to accept this income tax return.

Col. BARRON. No, sir; I understand the ruling covers all of the fiscal data.

Exam. MATTINGLY. I did not want there to be any misunderstanding. I think the whole subject should be discussed and not merely confined to the specific thing, namely, the income tax return.

Col. BARRON. Of course, we have other fiscal data, such as records on file with various governmental bodies, like the S. E. C., but if this objection is good, if you are going to rule this out, you will probably rule the other out.

Exam. MATTINGLY. That is what I wanted to go into.

Col. BARRON. Therefore I understand it extends to the whole question of fiscal data.

Exam. MATTINGLY. If you are going to discuss the whole question, that is what I wanted to bring up.

Col. BARRON. Before we adjourn here, I would like to direct Your Honor's attention to some requests for witnesses that have heretofore been made, and of course we don't want them here until the proper time and there are requests for subpoenas for various officers of the four companies and also a request here for a subpoena for the President of the holding company of Capital Transit Company, the North American Company, and I assume that if the Commission wants any reasons for our request for these subpoenas, that you would like to hear the reasons now, and we would be glad to tell you, or can we expect the witnesses at the proper time, anyhow?

Commr. PATTERSON. I think when the time comes, that we need the witnesses, and you can show what you want them for, we will rule on that question then.

Col. BARRON. I wonder if it might facilitate that to have it stated now?

Commr. PATTERSON. You may state it now.

Mr. HILL. As I understand, Colonel, these are petitions for subpoenas which you have in mind filing?

Col. BARRON. They have been filed, and we have copies for counsel.

Capt. DAVIS. Is there any further cross examination of Captain Laxton?

(No response.)

(Witness excused.)

Capt. DAVIS. On August 17, we addressed a letter to the Commission requesting subpoenas for various officers of the four respondent companies, and would it be appropriate to offer a copy of this in evidence, or is it sufficient to have the docket copy?

Mr. HILL. We have never received a copy of such a request.

Col. BARRON. I think that they were mailed to the Capital Transit Company only on this last one.

Capt. DAVIS. So that all parties may have that, I would like to offer a copy of this letter in evidence as War and Navy Department Exhibit No. 50.

In our opinion the testimony of these witnesses is
303 essential in order to properly present the case in this proceeding. These witnesses are officers of the respondent companies and presumably have knowledge of the financial condition of these companies and concerning their operations and of course we don't want them all present at the same time but we would like to have them at the proper time.

Mr. QUIRK. It depends on whether the questions asked of these witnesses, whether what they want of these witnesses is relevant and material. Mr. Mitchell is here and if anything is desired of the A. B. & W. Company, from any one of the officers, that is relevant and material, we would be glad to have him here without a subpoena.

Commr. PATTERSON. We assume that you will produce him without a subpoena if the Commission thinks it is relevant. The counsel have not consulted me about this matter at all.

Capt. DAVIS. That is satisfactory to us. We don't want the subpoenas if the witnesses are prepared to be here without them.

Mr. WHITTLESEY. As far as the W. V. & M. is concerned, if it is merely stated, as I understand, that the names listed here, are officers of the company, and therefore they are subpoenaing them for that reason, and I don't say that that is any reason for the issuance of a subpoena, and as Mr. Quirk has said, if they have any desire
for any particular information, why I think perhaps we can
304 arrange to give them what we have but as far as the issuance of a subpoena, in so far as any of our officers are concerned, I strenuously object at least as long as the only reason given is the fact that they are an officer of the company.

Commr. PATTERSON. Can we let it rest this way: That if the Commission thinks that their testimony is necessary, that you will produce them without a subpoena?

Mr. WHITTLESEY. Most assuredly, sir.

Mr. DUNLOP. I would like to say the same thing for the Capital Transit Company, if it is proper testimony that they want, we will waive the necessity for subpoena and we will have the witness here.

Col. BARRON. In reference to one company, which is not a respondent in name to the proceeding, the holding company, I think probably that there is certain information that we may want to elicit from some official of that company and we will state the reasons.

Capt. DAVIS. I might offer a copy of the letter from our office addressed to Your Honor, dated August 24, as War and Navy Department Exhibit No. 51.

(Letter marked "War-Navy Exhibit 51" for identification.)

Capt. DAVIS. This letter requests the issuance of a subpoena for Edward L. Shay, President of the North American Company.

The North American Company is a holding company,
305 with its principal offices at 60 Broad Way, New York.

While the Capital Transit Company draws its income from residents of Washington and vicinity, it is not locally controlled. Fifty per cent of its stock is owned by the Washington Railway and Electric Company, a holding company. Approximately 80 per cent of the capital stock of that company is owned by the North American Company.

As a result of this stock ownership, the New York holding company, that is the North American Company, absolutely controls and dominates the management and business and affairs of the Capital Transit Company.

One of the principal issues in this proceeding, as has been pointed out here, concerns the financial condition of the Capital Transit Company. The officials of the holding company are familiar with the financial condition of this operating company. More specifically, the officials of the New York holding company should have an intimate knowledge of the fiscal relationships between the Capital Transit Company, and the public on the one hand, and the Capital Transit Company and the holding companies on the other hand. Officials of this New York holding company should be able to explain the manner in which hundreds of thousands of dollars paid in fares by residents of this area have been withdrawn from the local operating company in dividends and otherwise for the benefit of the holding company.

306 In this connection, Your Honor will recall that Mr. Prettyman was not surprised at an apparant discrepancy between the company's income tax return and the published reports to stockholders.

Mr. PRETTYMAN. If there is any intimation there that there is any discrepancy, in the sense that there is any reflection on the company, I certainly would have been greatly surprised, and I don't think Captain Davis ought to comment on that, that there is a difference in the figures. Of course there is a difference in

method of computation of the various items. They are all of record. There is no reason why he should make comments on it.

Mr. HILL. The last time that that was called a discrepancy, casting a reflection on the company, I turned around and Mr. Prettyman was talking to some of the other counsel of the company and missed it, and I think that he would have objected to it.

Capt. DAVIS. In any event, they are different figures and up to the present no explanation has been made of this difference, and we have offered to put in the facts, and objection has been made.

Mr. PRETTYMAN. Has our side of the case come yet?

Capt. DAVIS. You have not let us put in our side of the case. We are prepared to show what the figures are and we will assume that you will have ample opportunity.

307 Mr. PRETTYMAN. Don't comment now on the fact that we have not explained it.

Col. BARRON. We are calling on the boss to come down here and explain them here.

Capt. DAVIS. Whether you explain them or not we assume that the officials of the holding company who actually control the affairs of this company should be able to explain them.

Consequently, we desire to present to this Commission a full story of all of the pertinent facts relating to the issues in this proceeding. It is apparent from what has taken place here that the full story can not be given by these local company officials. To obtain the complete story we want the President of this holding company, the North American Company, to testify in this proceeding. For that reason we respectfully request the issuance of a subpoena for the attendance of Mr. Edward L. Shea, President of the North American Company.

Commr. PATTERSON. It will be received as Exhibit No. 51 and taken under advisement.

(Exhibit War-Navy No. 51 received in evidence.)

Capt. DAVIS. To complete the record, I would like to offer as War-Navy Exhibit No. 52 a letter from our office, addressed to Your Honor, dated August 21, in which we clarified

308 our position concerning the issues in this proceeding. Copies of this were sent to counsel the other day.

Mr. QUIRK. This letter that Captain Davis has referred to, of August 21, are you receiving that in evidence?

Commr. PATTERSON. He is introducing it as an exhibit. If he cares to put it in as an exhibit I don't see any objection to it.

Exam. MATTINGLY. It is not evidence. It is merely to show they are willing to accept, with respect to these matters. It is not evidence of any fact other than that.

Mr. QUIRK. I wrote a letter, too, on that subject.

Capt. DAVIS. We are glad to have that as an exhibit.

Mr. QUIRK. I think that if this letter of August 21 is going to be received in evidence, that perhaps my letter ought to be received in evidence, to show that somebody answered it. I don't have a copy here.

Col. BARRON. What letter do you refer to?

Mr. QUIRK. I referred to the letter that I wrote to the Commissioner and which answered your letter to the Commissioner, and you have got a copy of it, haven't you?

Col. BARRON. No.

Mr. QUIRK. It will get there in the course of a couple of weeks. You are in the Pentagon Building, aren't you?

Mr. WHITTLESEY. Has the letter been received now in evidence, Mr. Commissioner, this last letter?

309 Commr. PATTERSON. It has been; yes.

(War-Navy Exhibit 52 received in evidence.)

Mr. WHITTLESEY. Now that it is in evidence, apparently as the Examiner has stated, it illustrates or is a presentation of a position by the War Department, and at this time I request the War Department and the Navy Department to make an election as to whether they are going to proceed hereafter on the question of excessive rates or discriminatory rates and I think that the time has come in this case when the companies at least to some minute degree should be advised of what they are up against.

I think that this letter illustrates perhaps what we are up against when we embark on a treasure chest of collateral issues but nevertheless I do think that at this time the War Department should elect, because from here on the question of proof in one case is entirely different from the type of proof in another case and I think that the companies should be given the opportunity of preparing some kind of an adequate defense, either as to one kind of case or the other type of case, and now that this letter is in I just frankly confess I don't know what they intend to do.

Col. BARRON. We tried to make ourselves clear in this
310 issue the difference between unreasonable rates and discriminatory rates has only been discussed this morning, so that we have not been called upon to comment on that heretofore, and my position is that they are interrelated; I think mainly in a rate case we try out the case of reasonableness, but certainly questions of discrimination may also be presented in a case of this kind.

Mr. HAMLEY. The motion that the matter be referred to a joint board was made at the opening of the hearing by Mr. Ketner especially for the Virginia Commission.

I am appearing also for the Virginia Commission and Mr. Ketner was unable to be here today but I would like to preserve the right, until I have an opportunity to consult with Mr. Ketner,

as to whether or not he would like to take an appeal to the full Commission from the overruling or denying of it.

Commr. PATTERSON. The full Commission has ruled on that.

Mr. HAMLEY. Thank you.

Mr. QUIRK. Mr. Commissioner, as long as you have received Col. Barron's letter addressed to you of August 21, I would like to offer in evidence my letter addressed to you more or less in answer to that letter of August 23.

Exam. MATTINGLY. Let us put the original in as an exhibit.

(Exhibit 53 received in evidence.)

311 Commr. PATTERSON. If there is nothing further, this hearing is adjourned until further notice.

(Adjourned at 11 o'clock until further notice.)

312 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B,"
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Wednesday, September 8, 1943.

Hearing in the above-entitled matter was resumed at 9:30 o'clock a. m., pursuant to notice.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances: Same as heretofore noted.

314 PROCEEDINGS

Mr. DUNLOP. Mr. Commissioner, before you open the proceedings, as we say in Congress, I would like to rise to a question of personal privilege:

At the conference in your office in reply to your question, I think, although I am not sure, that I made the statement that Capital Transit Company had no busses on lease from the Defense Plants Corporation. That is correct. I think I also said, Colonel, that we had no busses on lease, no other busses on lease from the Defense Plants Corporation and that what busses we had that had been financed by us were purchased under an agreement with R. F. C. or something of that sort.

To that extent, if it is material, I was mistaken. There are other busses that are on lease from the Defense Plants Corporation used in the system service.

Commr. PATTERSON. I thought perhaps your understanding was a little bit wrong.

As I informed counsel at our conference on Saturday, September 4, the Commission has for the present deferred action upon the appeal of the War and Navy Departments from my ruling at the hearing on August 25th with respect to the admissibility of certain evidence.

In accordance with the understanding reached in that conference, the president of the Capital Transit Company
315 will be the next witness, after which the War and Navy Departments will proffer such additional evidence as they may have to offer, cross examination of previous witnesses will be completed, and the respondents will submit their evidence.

You may call Mr. Merrill.

E. D. MERRILL was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. You have given your name?

A. Yes, sir; E. D. Merrill.

Q. What is your address and position, Mr. Merrill?

A. My address is 3111 Hawthorne Street, Washington, D. C.; I am president and general manager of the Capital Transit Company.

Q. How long have you been president of the Capital Transit Company?

A. Since March of 1937, I believe.

Q. You are generally familiar with the present rate structure of the company?

A. Yes, sir.

Q. Describe briefly and in a general way what fares are now charged.

Commr. PATTERSON. Colonel, will you speak a little louder, and also if the witness will speak a little louder, I can scarcely hear you up here.

316 Col. BARRON. All right.

By Col. BARRON.

Q. State briefly the schedules of fares that are now charged by your company within and without the District of Columbia.

A. We have in the District of Columbia a fare scheduled fixed by order of the Public Utilities Commission of the District of Columbia in an order dated November 3, 1937. The present rate is 10 cents each, 8⅓ cents tokens, sold in lots of 3 for 25 cents, and a weekly pass for $1.25.

The order of the Commission in 1937 fixed six tickets to be sold for 50 cents but later, early in 1943, hearings were held and that was changed to 3 for 25 cents.

The rates of fares charged in Maryland are a series of zone fares running generally from the District Line out to various zones in Maryland.

The fare structure is rather complicated and each different route has its own fare structure.

I would be glad to file all of those tariffs if that is desirable.

Q. I think that would be a good idea, sire, if you would just file a schedule of those tariffs.

Commr. PATTERSON. Will you file a set of tariffs for the record and a copy to each of the parties appearing?

The WITNESS. We have in effect, as you know, a rate of fare of 5 cents between 19th and Constitution Avenue
317 and the Pentagon Building, and a rate of fare to the Pentagon Building by way of the other route, from 7th and Constitution Avenue to the Pentagon Building which consists of the District fare plus five cents.

By Col. BARRON:

Q. What is the fare from Chevy Chase Lake?

A. Five cent fare from Chevy Chase Lake to the District Line, and the regular District fare from the District Line in.

Q. To what points across the District Line do you have a 10 cent fare, can you recall that, offhand?

A. In general our fares beyond the District Line are 5 cent zones; we do have one or two places where there is a 10 cent fare.

Q. How far are those places over the line in Maryland?

A. Well, the 10 cents?

Q. I mean where there is no additional fare charged.

A. We have no points where we operate any substantial distance beyond the District Line without an additional charge. The street car line operating out Rhode Island Avenue continues beyond the District Line to Mount Rainier, a distance of about a fifth of a mile, because that seemed to be the only convenient turn-around point and bus transfer point which could be developed in that vicinity and collection of the zone fare for that distance would interpose some difficulties, a large number of people transfer at that point from street cars to busses.

318 At the terminal of the Wisconsin Avenue car line at Wisconsin Avenue and the District Line, the street cars turn in a terminal owned by the company, which is west of Western Avenue and the passengers actually ride, I suppose, about 50 or 100 feet beyond the District Line.

On the Cabin John line, the district fare is good for a short distance beyond the district line, to what we call stop No. 24. That

was due to the location of a bad gulley and a bridge where they were using the bridge as a walkway, which was unsafe.

We knew of no way to stop that, stop the using of it in order to cross the bridge and get to the district fare point, so we extended the district fare out to the stop No. 24.

Exam. MATTINGLY. How far is stop 24 from the line?

The WITNESS. I think it is about a fifth of a mile, around a thousand feet, if my memory is correct on that.

We have the Queens Chapel route at Avondale, or College Park, being a line which turns around just over the line, I suppose about 300 feet, because that is the only place we can turn around in that general vicinity.

Wherever we actually render service beyond the district line we charge an additional fare.

By Col. BARRON:

Q. You mean for a substantial distance?

A. Yes; and these turn arounds just beyond the district line do not serve any residential area of any consequence at all.

319 Q. All right. What is the present rate schedule provision regarding transfers between busses and street cars?

A. Well, there is a general universal free transfer within the district between intersecting lines, both street car lines and busses.

Q. State generally how the fares within the district are fixed.

A. Well, our present fare structure was fixed by order of the Public Utilities Commission, as I have already mentioned, Order No. 1634, dated November 3rd, 1937. This order followed an application made by the company on June 19, 1936, for an increased rate of fare.

The fare requested was 10 cents cash and 8⅓ cents tokens.

The weekly pass was then selling for $1.00 and that was a voluntary fare introduced by the company and it was proposed to raise the price to $1.25 if the Commission increased the token rate.

The Commission's order was delayed and the company, on November 30, 1936, filed with the Commission notice of change in rates for the weekly pass from $1.00 to $1.25 effective January 3, 1937.

Later on in the year, on June 2, 1937, an amendment to our petition was filed asking for a token rate of 8¾ cents, or 4 tokens for 35 cents.

320 The Commission, however, in November, issued an order fixing the token rate at 8⅓ cents, which was less than we asked for in our amended petition, 6 tokens to be sold for 50 cents.

And then, as I have already stated, in 1943 the Commission held some hearings and reduced the number of tokens which had to be purchased from six to three, and tokens are now being sold 3 for 25 cents.

Q. How was the rate on the Pentagon lines fixed?

A. Well, the fare to the Pentagon Building was determined upon after study of the additional cost of carrying passengers something like three and a half miles beyond the previous place of employment, and after a discussion with various representatives of the War Department.

The estimated cost per passenger was substantially in excess of 5 cents, but to go along with the wishes of the War Department we fixed at 5 cents rather than a higher rate.

Of course, that was with reference to line R-2, which was the first line established, operating over the Memorial Bridge.

The 5 cent rate was filed with the Interstate Commerce Commission, and permitted to go into effect without objection.

At the time of the filing of the tariff for the service between 7th and Constitution Avenue and the Pentagon Building, the rate was fixed at a District fare plus 5 cents. Of course, that line
321 came so far into the District of Columbia it would not be appropriate to carry passengers from the Pentagon Building to that point for 5 cents——

Q. Well, we just want to know how it was fixed. What other lines does your company operate outside the District of Columbia other than the Pentagon line and the ones you have mentioned?

A. Well, we have a number of lines we operate outside the District of Columbia into Maryland. The one which goes out Rhode Island Avenue to Mt. Rainier has an extension which goes from Mt. Rainier out through several suburbs, operated by streetcar service.

We have a bus line, Hyattsville-College Park line which goes beyond the district line through Mt. Rainier, Hyattsville, and College Park.

We have a line which goes from Mt. Rainier out to Green Belt.

We have a line which goes out through the Silver Spring area with a number of branches, one to Forrest Glen, one to Four Corners, we have two branches going to Four Corners by different routes, and one branch goes to East Silver Spring.

We have a line through Takoma, Maryland. The lines from the District of Columbia district line out through Takoma, Maryland, up to and beyond the Sanitarium in Takoma, Maryland.

We have lines which extend beyond the district line in the Connecticut Avenue-Chevy Chase area, going as far as
322 Kensington and Garrett Park, and I believe some trips to Wheaton.

Q. I believe you have already stated that these lines all operate at additional cost from the—additional fare——

A. Yes, sir. We have also lines out the Wisconsin Avenue area, going through Bethesda out towards some of the suburbs,

which is operated by the Montgomery Bus Lines going all the way to Rockville.

Q. Could you just state generally the length of those main lines which you have mentioned, the length from the district line to their terminals?

A. I cannot state that from memory.

Mr. PRETTYMAN. I might say, Mr. Commissioner and Colonel, that the engineer of the company who is familiar with the details is here and will be glad to give those distances.

Col. BARRON. I will be glad to withdraw that question as far as Mr. Merrill is concerned.

By Col. BARRON:

Q. How much equipment in the way of busses does your company have at this time that is leased or rented from, that is, not wholly owned, by your company?

A. Well, we have quite a number of vehicles not wholly owned now, but we have only 120 vehicles which are leased from the Defense Plants Corporation.

Q. What is the rental of those 120 busses?

A. We have a rental of 5 cents per mile, with a minimum charge of $1,500 per bus per year, whichever is the greater.

323 Actual payments have been substantially above the 5 cents per mile.

Q. What have they been?

A. I do not have the figures. Mr. Heberle, the comptroller, I think, has them available here.

Col BARRON. All right, we will get those.

By Col. BARRON:

Q. Are any of those 120 busses employed on the two routes to the Pentagon Building?

A. Well, they may be, they are used generally in our service and there may be some of them go over there, I can't say definitely. Mr. Locke, the engineer, would have that information.

Q. Do you know how this rental was fixed, this 5 cents per bus mile?

A. Well, it was fixed after a number of discussions with the Defense Plants Corporation, and it was intended to carry through to cover the cost of the equipment as near as was reasonably possible. Now, it was intended to be somewhat in excess of the actual depreciation charges on equipment and was set somewhat above that in the hope of amortizing the busses sooner than they would normally be out of service.

The minimum charge, of course, was to protect the Defense Plants Corporation against our running them only a very few

miles and therefore paying such a low rent that they would not have the busses amortized at the end of their useful life.

324 Q. Does that represent a reasonable return from your company for the expense of the busses, including adequate depreciation?

A. Well, this rental is to return to the Defense Plants Corporation, it is not a return to us. The rentals we pay on the minimum of $1,500 per year per bus was sufficient, I think, to amortize the bus within its life, assuming that the bus is not used a great mileage.

Commr. Patterson. Are these busses of standard construction or something else?

The Witness. Well, they are substantially standard construction. They are what is called the Victory Bus; that was a bus that had some critical materials left out of it; for instance, the stanchions which are normally chromium plated material are wooden, and some of the hand holds on the seat backs are wooden instead of metal; but from the standpoint of motive power and transmission, it is the standard bus.

Commr. Patterson. Does it depreciate faster than the standard bus?

The Witness. Oh, I do not think that under normal usage it would depreciate faster, except for some of these simpler, minor items.

Commr. Patterson. How about *absolescense*?

The Witness. Well, that is something that is very hard to say, because we know, of course, that bus companies and
325 manufacturers are studying changes in their models and changes in the motive power which they make, not only these but other busses, obsolete at the close of the war period.

I would hesitate to say. I can say, I think, though, that these particular busses would not become obsolete faster than the busses we had been buying up to that time probably.

Mr. Prettyman. Colonel Barron, could I just interject a question on that point?

Col. Barron. Certainly.

Mr. Prettyman. Are the Victory busses steel bodies instead of aluminum?

The Witness. Yes; that is true; and that, of course, would tend to wear out or become unsatisfactory sooner than the aluminum, probably, and they are heavier, and therefore cost more to operate.

Mr. Prettyman. And the extra wear and tear because of their being steel instead of aluminum bodies is a factor, isn't it?

The Witness. Yes; that is true.

Mr. PRETTYMAN. And with the steel bodies, after the war, wouldn't that tend to make those become obsolete faster than the aluminum bodies that might be in fair shape after the war?

The WITNESS. Well, that is probably true, I hadn't thought of that particular feature of it.

By Col. BARRON:

326 Q. Has your company received a certificate from the War Department for writing off depreciation on these busses, five-year certificate, you know to what I refer.

A. No, sir; we haven't.

Q. You have never asked——

A. We have received certificates of necessity which would permit us to take advantage of that, but we haven't as yet taken advantage of it, of any of that accelerated depreciation.

Commr. PATTERSON. Well, does that also authorize you to complete depreciation of them sooner if the war should end sooner, that certificate?

The WITNESS. Mr. Heberle is more accurately familiar on that than I am. As I recall it, the certificate permits writing off of depreciation on the equipment in five years.

Commr. PATTERSON. Certificate, you mean?

The WITNESS. If the war ends before that, you can reconsider and perhaps do it faster if it should. We have not taken advantage as yet of any of those certificates.

Mr. HILL. Which equipment are you talking about, your own equipment?

The WITNESS. Our own equipment.

Mr. HILL. The Defense Plants Corporation would have to write off the other, wouldn't it?

The WITNESS. Yes, sir.

Mr. PRETTYMAN. The certificate of necessity you were talking about is an income tax adjustment, isn't it?

327 By Col. BARRON:

Q. You alluded awhile ago, or counsel did, to a comparison between steel and aluminum bus bodies.

Will you state, if you know, how much the steel body bus weighs in comparison with one made of aluminum?

A. I do not have that figure; no.

Q. All right.

Has your company made any allocation of expenses applicable to passenger traffic on your lines to the Pentagon Building as between other operations?

A. Mr. Heberle has made a study of that. I do not have the figures. He has made a rather careful study of that.

Col. BARRON. All right. I will ask him.

By Col. BARRON:

Q. Are you familiar with the allocations, if any are made by your company, as between overhead expenses of your street car operations and bus operations?

A. Well, there again I think Mr. Heberle, the comptroller, would be in position to answer more accurately than I am.

Col. BARRON. All right. I will proceed to ask Mr. Heberle. All right, sir.

By Col. BARRON:

Q. Are you generally familiar with the property accounts of your company and particularly with the records of the historical cost of the properties?

A. Only in a most general way. Mr. Heberle has worked on that problem for many years and could answer it more accurately than I.

328 Col. BARRON. All right. We will save that for him.

By Col. BARRON:

Q. Do you know the approximate cost per bus of the busses employed on the Pentagon line?

A. There is quite a variety there. I suppose it would cost from 11,000 and 12,000 to 12,000 possibly. Then again, Mr. Heberle would have all that information.

Q. Do you know the unit cost per passenger-mile and per bus-mile of the Pentagon operation?

A. No; I do not.

Mr. DUNLOP. Mr. Heberle will give that, though?

The WITNESS. Yes; he will have that information.

Col. BARRON. Yes, sir.

By Col. BARRON:

Q. Have you given any consideration to operating busses to and from the Pentagon Building at periods other than rush hours?

A. Well, we have discussed that from time to time but it appears to us that the additional bus mileage would not be justified inasmuch as the Virginia lines, as we understand it, have sufficient capacity now, and it would not be in accord with the urge to write off miles to add that service at this time when the other lines have ample capacity.

Q. Have you given any consideration to the savings that might be effected in operating the busses directly from the Pentagon Building from various other points in the district; that is, operating them directly to the Pentagon Building from those

329 various other points in the district as, for example, Chevy Chase, Silver Spring, Georgia Avenue, and elsewhere along the lines of the principally traveled bus routes?

A. Yes; we have studied that pretty carefully and our conclusion is that it would use more busses and more bus-miles to operate that way than under the present system.

Q. The present system is better?

A. The reason for that is that it is very hard to get average loads that are up to capacity where you have a great variety of routes, one route is above capacity and one below, and you can not get the average system loading that you can in supplying the service in one lump, as it were.

Q. Are you able yourself to make any comparison between the cost of service on the Pentagon line as compared with other lines of your company?

A. Well, there are certain general considerations that we must recognize. The service to the Pentagon Building is carried on during rush hours, morning and evening only, and that results, of course, in a very high cost per passenger for interest and depreciation.

The overtime payments for drivers which occur in those rush-hour periods where men work extra busses over and above the regular runs at time-and-a-half rates and also, even in normal times, when you have ample manpower, there is a guarantee which we have to pay to any man, and that enters into the
330 cost of furnishing rush-hour service.

Q. Well, you have to do that on other runs as well?

A. Yes; but other runs have midday service to help make up, by the day runs, and where a man is on a regular day run, eight hours, whatever it may be, that is not subject to the benefits that these extra rush hour busses are subject to.

Q. In other words, I understand you to say by this, that the costs are higher on that operation than on other operations?

A. Yes, that is true; and the travel to and from the Pentagon Building is to the Pentagon Building in the morning and away from the Pentagon Building in the evening, and we do not have the opportunity to pick up return travel except, that we carry some few of the custodial employees there, but it is very trivial in comparison with the service we must furnish, and that means that the vehicle has got to earn enough on the one trip to pay for the round trip, whereas on the other lines in the district, there is almost in each of them a substantial travel in the reverse direction, and on the other lines there is also the on and off traffic; that is, people getting on and people getting off and leaving room for others, so that to some extent the capacity is reused on that trip, but on this Pentagon line, the passengers stay on from one end to the other and there is no on and off travel along the line.

Q. Have you made any actual comparison of the cost of your line in comparison with the other lines?

331 A. Mr. Heberle has those figures, he has made some study of it.

Q. As well as revenues?

A. Yes, sir.

Col. BARRON: All right. We will get that from him.

By Col. BARRON:

Q. Are the Pentagon busses used only on that run over there?

A. Some are and some are used in other services.

Q. You do not know how many?

A. The proportion there varies from day to day and I am sure Mr. Heberle has gone into that very thoroughly.

Q. Have you given any consideration to extending your operations to the Navy Arlington Annex in Gravelly Point?

A. Well, we consider extending the service to the Navy Annex as early as the spring of 1941 when we had some correspondence with Admiral Williams about it and actually made an application there at one time which was later withdrawn to go over to the Navy Building.

It appeared to us that the other Virginia lines had ample capacity there and we did not want to duplicate the service and we had better confine ourselves to the Pentagon Building.

You asked about the airport; we have not discussed seriously, except to answer questions about it, going down to the Airport Building; either the Airport, or I assume, Air Force Building.

332 Q. And assuming that, for the sake of giving information here, and without expressing any opinion as to where the District boundary line, I am asking you to assume that the District boundary line is at the point indicated by the Government investigation at the 1791 high water mark which is shown on exhibit introduced here as War and Navy No. 1, have you considered the possibility of operating the line to and from the District Line on the way to the Pentagon and on the way to Gravelly Point?

Mr. PRETTYMAN. We object to the question if the Commissioner please. It is practically synonymous to asking him where the District Line might or might not be.

Commr. PATTERSON. Well, he might answer the question as to whether he has considered it or not.

Mr. PRETTYMAN. He can answer that "yes" or "no."

By Col. BARRON:

Q. Have you considered operating to that so-called line?

A. No; we have never considered operating to that particular line. We have considered operations to the various bridges either on one side or the other side of the Potomac River.

Q. All right, here is another assumption, again assuming that the District Line is as indicated on the exhibit I previously referred to, Exhibit 1, if you should establish such routes, would you be required under present applicable District tariffs to perform that service for the District fare?

333 Mr. PRETTYMAN. That calls for a double speculation.

Col. BARRON. That is right.

Mr. PRETTYMAN. If Your Honor please——

Commr. PATTERSON. Well, it is purely opinion. He can answer the question as to whether he has considered it or not.

Mr. PRETTYMAN. Well, he was not asked whether he had considered it at this time, if your Honor please.

Commr. PATTERSON. Repeat the question, please.

Mr. PRETTYMAN. He has asked would he be requir l.

Commr. PATTERSON. If he knows the fare he may answer the question.

The WITNESS: I do not see any reason why we would be required to go to those points.

Col. BARRON. No, I am not asking that question.

The WITNESS. And if we were not required to go there, obviously we would not be required to give service at the District fare. I do not see the point in going to those particular locations, there is nothing there, there would be no purpose in going there unless you go on out into Virginia and serve the people over on the other side of the District line.

By Col. BARRON:

Q. You, of course, are familiar with the 1942 annual report to the stockholders of your company?

A. Yes, sir.

Col. BARRON. What was the last number of the exhibit?

Commr. PATTERSON. 53.

334 Exam. MATTINGLY. 53.

Col. BARRON. I offer for identification and ask that it be marked as Army and Navy Exhibit 54, a printed copy of the annual report for the year 1942 of the Capital Transit Company.

(Army and Navy Exhibit 54, Witness Merrill, marked for identification.)

By Col. BARRON:

Q. Do you recognize this as a copy of your annual report?

A. Yes, sir; that is the report.

Col. BARRON. I offer it in evidence.

Mr. HILL. I would like to have a chance to look at it, Mr. Commissioner, so we could object if we wish

Commr. PATTERSON. It will be identified as Exhibit No. 54.

Mr. PRETTYMAN. If Your Honor please, we interpose an objection to the exhibit that insofar as the over-all material contained therein, it is immaterial to the present controversy.

Mr. HILL. There is nothing in here to identify this with the fares in issue here. Mr. Commissioner it comes squarely within the scope of your previous ruling.

Commr. PATTERSON. Well, the report is published for distribution; anybody can get a copy of this that asks for it, can they not?

The WITNESS. Yes, sir: we have distributed it pretty freely.

335 Mr. HILL. That is not the basis of our objection, Mr. Commissioner, please. These are over-all figures entirely and it has been ruled that they have no bearing on the issues here as to these lines.

This is not restricted to the side issue in this case.

Commr. PATTERSON. There has been no such ruling as that.

Mr. HILL. Perhaps I misunderstood your ruling, Mr. Commissioner. I would be glad to hear it again if I misunderstood you.

As I understand it, the only evidence that will be received is that bearing specifically to the matter of the routes herein issue; if I am wrong I want to be set right.

Col. BARRON. I believe we are discussing all other operations in here and of course you might need this in order to consider the specific operations.

Mr. HILL. Yes, you might need the income tax returns, too.

Col. BARRON. Yes, that is what I thought.

Commr. PATTERSON. The objection is overruled. You may proceed.

Mr. HILL. Mr. Commissioner, will you not hold off for just one moment now until I find that ruling of yours in the record.

Commr. PATTERSON. I know what you think is wrong with the ruling. We will proceed.

336 Col. BARRON. I respectfully suggest that the Commissioner has ruled.

May I go ahead?

Comm. PATTERSON. Yes, sir.

(Army and Navy Exhibit 54, Witness Merrill, received in evidence.

Col. BARRON. I would like to have marked for identification as the next exhibit here, copy of Order No. 1634, which is headed "Public Utilities Commission of the District of Columbia, in the matter of Rates of Fare and Transfer Privileges on Street Car and Bus Lines of the Capital Transit Company," dated November 3, 1937, formal case No. 247.

I do not have but one copy of this but he has previously testified concerning this order of the Commission, but I thought it might, as a matter of information, properly go into the record.

(Army and Navy Exhibit 55, Witness Merrill, marked for identification.)

By Col. BARRON:

Q. Do you recognize this as a copy of that order to which you have previously testified?

A. Yes, sir. This seems to be the order fixing the rates of fares, the order dated November 3, 1937, to which I referred previously.

Col. BARRON. Yes, sir.

I offer that as the next exhibit.

337 Exam. MATTINGLY. Do you have any other copies?

Col. BARRON. That is the only one I have.

Mr. PRETTYMAN. What is the number of that?

Exam. MATTINGLY. You mean exhibit number? 55, and it is formal case 247, order No. 1634.

Mr. DUNLOP. Order number?

Exam. MITINGLY. Order No. 1634.

Mr. HILL. Mr. Commissioner, I do not want to seem to be objecting all the time, but I would like to see a copy of the exhibit, I may have to write a brief in the case.

Col. BARRON. Well, this only concerns Capital Transit. They are familiar with it.

Mr. HILL. Well, I think at present is concerns every respondent in this case.

Exam. MATTINGLY. The rules require that copies be furnished to all parties, Colonel.

Col. BARRON. Captain Davis has two or three questions to ask. Go ahead.

By Capt. DAVIS:

Q. Mr. Merrill, you referred to two lines on one of which you charge 9 cents and on the other you charge 5 cents plus the district fare. Is there a substantial difference in the distance traveled on those two lines?

A. Not much difference in the total distance. The Q-2 line comes considerably farther into the district than the other lines, the Q-2 line being the one to 7th and Constitution Avenue.

338 Exam. MATTINGLY. To 7th and Constitution?

The WITNESS. Seventh and Constitution Avenue; yes, sir.

By Capt. DAVIS:

Q. Now, when you say that, are you making an assumption as to where the district line is?

A. Well, I have a rough idea that it is somewhere in the vicinity of the Potomac River, I refer to the Potomac River as the District line. The Q–2 comes further into the district than the R–2 does.

Q. Do you have the figures on that as to just how much farther or if not, can you tell us which officer of the company would supply those figures?

A. Mr. Locke, the engineer, can supply those figures.

Q. And those are based on the assumption, when you say the bank of the Potomac.

A. Well, I have always thought of the Potomac as the District Line.

Q. Now, you referred to the 5-cent rental paid and the Defense Plants Corporation contract, and you stated that you believed that was ample to cover this depreciation.

Did you consider an interest charge in computing that?

A. I think I stated that the $1,500 per year would probably be sufficient to cover interest and depreciation, but the 5 cents fare might not cover it, if it ran only a few miles the 5-cent rental might not cover it.

Q. What interest rate do you use in making that computation?

339 A. Well, I can't say that I have made any particular computation on it.

Q. Now, under that agreement, when the equipment is paid for by means of the rental, does it later become the property of your company?

A. No, sir; not unless we exercise an option to buy it or make some agreement for purchase.

Col. BARRON, Off the record just a moment, Mr. Commissioner.

We have a copy here of the Defense Plants contract, a copy that the Defense Plants Corporation sent us of the contract.

I do not know whether you want it in evidence or not; for your information; it is immaterial to us.

Do you think you would like to have a copy of it?

Exam. MATTINGLY. No.

By Capt. DAVIS:

Q. Mr. Merrill, do you know the average length of ride of a passenger, including transfers as a part of the same ride, on your system, within the district?

A. No; we haven't any very accurate study of that. I would not be able to state any figure.

Q. Is there any other officer of your company who would be able to state?

A. Either Mr. Locke or Mr. Heberle might. I haven't it in mind and I doubt whether they could give it.

Q. Do you know the number of average passengers per bus mile on the R–2 line, or could somebody else testify to that, too?

340 A. Mr. Heberle perhaps or Mr. Locke.

Q. Could they compare it with the average passengers per bus mile for other bus lines within the district?

A. Well, I think so.

Q. You do not know what that is yourself?

A. No, sir; I do not.

Q. Now, I believe you said that this rush-hour service to the Pentagon was somewhat more expensive than other types of service?

A. Yes.

Q. Well, now, suppose you did perform all day service out there and also dropped passengers at the district line, wherever it is, or at other points on those lines, and also served out to the Arlington Annex and to Gravelly Point, in that case would that combined service tend to reduce your unit cost?

A. It would all depend on the volume of traffic that might develop in relation to the service that had to be rendered. If the midday service were operated at a loss, of course that would increase the cost.

If, on the other hand, there was sufficient travel to fully occupy the vehicles it might reduce the cost for that passenger.

It would increase the over-all cost of rendering the service, and only—the only basis on which it would help would be increased revenue which might be derived from it.

341 Q. You haven't any opinion then as to whether it would reduce your cost per passenger or increase it?

A. No, I have not.

Q. You have made no study of that?

A. Some studies were made very early in the study of the supposed operation, but they were so speculative, that I would not think it would be of much use to refer to them now.

Q. In other words, is it a fair statement then, that your main reason for not performing that through service was a desire not to hurt the feelings of these Virginia companies?

A. No, I do not think that that is a fair statement.

Mr. HILL. Might hurt the feelings of the O. D. T. more than ourselves, perhaps.

The WITNESS. It seemed to me a perfectly sensible reason regardless of any other reasons, was the need for conserving bus miles, for we were reducing our bus miles all over the District, and the necessity of curtailing the use of gasoline and tires.

It would obviously be to the detriment of our other passengers to run busses over there and take it away from some other operation within the district and we certainly could not add to our

mileage a route which is duplicating another route unless the volume of traffic requires it, and the other service is not ample to take care of it.

That would be directly contrary to O. D. T.'s statement
342 of policy.

Mr. QUIRK. Contrary to the regulatory laws, too, wouldn't it?

The WITNESS. Yes, unless the public convenience and necessity requires it.

By Capt. DAVIS:

Q. In other words, the effect of O. D. T.'s ruling is such in your opinion as to require passengers to use a service costing a higher fare than they would if your company ran the busses which could operate at a much lower fare?

A. I do not see that that conclusion is justified at all.

Mr. HILL. They are not only moving the Potomac, they are now muddying the waters of it.

(Army and Navy Exhibit 55, Witness Merrill, received in evidence.)

Cross-examination by Mr. PRETTYMAN:

Q. Mr. Merrill, did you discuss the matter of transportation with officials of the War Department before the Pentagon Building was located at the present site?

A. Yes, we discussed the matter with various officials of the War Department prior to the construction of the building.

Q. With what officials did you discuss the matter?

A. Well, I remember discussing it with General Somervell in August 1941; in fact, I had lunch with him, I think, on August 2nd, and later on in the month of August, on August 26,
343 wrote him a letter stating some of the considerations regarding the Pentagon Building.

Q. Have you a copy of that letter to the War Department?

A. Yes, I think there are copies there.

Q. Is this [indicating] a copy of the letter to which you refer?

Col. BARRON: I would like to see a copy.

The WITNESS. This is a copy of it.

Mr. PRETTYMAN. May this be marked for identification—off the record—are these exhibits to be marked right straight on?

Exam. MATTINGLY. Yes, right straight through.

Commr. PATTERSON. This may be marked No. 56.

Mr. PRETTYMAN. May this be marked for identification Exhibit No. 56?

(Capital Transit Exhibit 56, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Did the general, General Somervell, or any other War Department official, protest against your proposal in that letter that there would be an additional 5 cent fare to the Pentagon Building?

A. No, he did not make any objection, so far as I recall, or any other of the War Department people. There was some objection later on, before we began operations, to a proposal that we would have to charge 7½ or 8 cents per passenger
344 in order to come out even on it.

Q. Subsequent to the building of the Pentagon Building, did the Regional Committee of O. D. T. become interested in this matter of the fares to the Pentagon Building?

A. Yes; they did.

Q. What did they do?

A. Well, they called a number of conferences, which we attended, and first proposed that a joint rate amounting to 15 cents per passenger should be charged and that the companies should enter into some joint rate arrangement.

This the companies took up and finally agreed to make some arrangement of that sort.

Then later on, they proposed a 14⅙ cent fare instead of the 15 cent, and we, I think, then suggested that a little different charge which would amount to 14.6 cents per passenger. That was discussed.

Then then withdrew their other suggestion and proposed a 13⅓ cent fare, joint rate between our company and the other two or three companies serving the Virginia area.

Q. Did they have any inquiry made by an independent person as to the amount of these fares?

A. Yes, sir; there was a report made, I believe, by Mr. Blanning, at the request of Senator Burton, concerning the proposed rate of fare and what was a reasonable fare.

Q. And did Mr. Blanning make a report?

345 A. Yes, he made a report.

Q. Were you furnished with a copy of that report?

A. Yes, sir.

Q. (Displaying a document.) Is this a copy of the report to which you refer?

A. Yes; this is a copy.

Mr. PRETTYMAN. May this be marked as Exhibit 57 for identification?

Commr. PATTERSON. It will be marked No. 57.

(Capital Transit Exhibit 57, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Were you advised what action the Regional Committee of O. D. T. took in regard to this matter?

A. The Regional Committee?

Q. Yes.

A. Well, the Regional Committee, as I have already said, proposed this 13⅓ cent fare.

Q. Weren't you furnished with a copy of the minutes of a meeting of the Regional Committee?

A. Oh, yes; there was a meeting, I think it was on May 19.

Q. Were you sent a copy of the minutes of that meeting?

A. February 19, 1943; when they had the meeting at which they discussed this particular fare. Yes, we have a copy of it.

Q. I will ask you to look at this document and state
346 whether that is a copy furnished you of the minutes of the Washington Regional Committee of Defense Transportation Administrator's.

Capt. DAVIS. Mr. Commissioner, regarding all this line of examination and these reports, and so forth and so on, we do not see that they are in the slightest material to the issues, but we have no objection to their introduction if the Commission would like to have them in the record.

Commr. PATTERSON. Yes; it will go in.

The WITNESS. Yes, sir. This a copy.

Mr. PRETTYMAN. May this be marked for identification No. 58, Exhibit 58?

Commr. PATTERSON. Exhibit No. 58.

(Capital Transit Exhibit 58, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Now, Mr. Merrill, what did the bus companies do in response to the action of the Regional Committee?

A. The bus companies met and considered the matter and finally agreed to the proposal of the Committee.

Q. Did the bus company address a letter, stating that they agreed to the proposal——

A. Yes, sir. Letter dated March 9, 1943.

Q. I hand you this document and ask you if this is a copy of that letter.

A. Yes, sir. That is a copy of it.

347 Mr. PRETTYMAN. May this document be marked Exhibit 59 for identification?

Commr. PATTERSON. It will be so marked.

(Capital Transit Exhibit 59, Witn. Morrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Mr. Merrill, have you any data as to the suburban fares of other bus companies in the eastern section of the United States?

A. Yes; I wrote to the American Transit Association, New York, and asked what material was available, and received this tabulation of suburban zone fares charged by transit companies operating in the eastern United States, based on reports as of November 1942.

Mr. PRETTYMAN. I should like to have this original document marked Exhibit No. 60 for identification, and unfortunately, we——

Col. BARRON. May I take a look at it?

Mr. PRETTYMAN. Have only two copies.

Commr. PATTERSON. Do you have one for Mr. Hill?

Mr. PRETTYMAN. We will furnish Mr. Hill with a copy.

I should like to have it marked for identification and hand it to the Commissioner, and then take the other copy and have it reproduced.

Commr. PATTERSON. It will be identified as No. 60.

(Capital Transit Exhibit 60, Witness Merrill, marked for identification.)

348 By Mr. PRETTYMAN:

Q. Mr. Merrill, referring back to the letter of the bus companies to the Regional Committee, could you state for the record just briefly what it was that the bus companies agreed to.

Exam. MATTINGLY. That is Exhibit 59 you are speaking of?

Mr. PRETTYMAN. The letter of March 9, which is Exhibit 59.

The WITNESS. The companies agreed to the proposal of the Regional Committee which contained the following items:

First, the Trans-Potomac inter-company rate of fare, between points in the District of Columbia and the Pentagon, the Navy Annex, and the Army Air Forces Buildings, shall be 13⅓ cents per trip, the fare to be evidenced by two coupon tickets, sold in books of not less than 12 one-way rides for $1.60 for 12 rides.

The books were to be sold to employees of the War and Navy Departments located in the Pentagon, the Navy Annex, and the Army Air Forces Buildings only, and to be valid for transportation to and from those points only.

Second, certain rates of fare now existing between specified points in the District of Columbia and/or Virginia, simultaneously with the effectiveness of the rate of fare in the first paragraph shall be either eliminated or changed as follows:

The first one is the 5 cent fare between Arlington Memo-
349 rial Circle and the Pentagon Building or the Navy Building was to be eliminated.

Next, the 5 cent fare charged by the Capital Transit Company from 19 (c) to the Pentagon was to be eliminated.

Third, the 7½ cent interstate rate charged by the Alexandria-Barcroft and Washington Transit Company was to be eliminated, and

Last, the 5 cent fare charged by the Arlington and Fairfax between Rosslyn and the Pentagon was to be eliminated.

Of course, we specified that the interline rates should be only for the duration of the emergency or until December 31, 1944, whichever date shall be the earlier.

We also specified that we did not voluntarily make the proposal but merely in an effort to aid the war effort and comply with the Committee's suggestions.

Q. Well, in substance, was the letter an attempt to meet the conditions suggested by the Regional Committee as it was reflected in the minutes of the meeting of February 19th?

A. Yes; that was it.

Mr. HILL. Mr. Merrill, may I ask just one question: No change was contemplated in the local fares of the Virginia lines to and from the District, was there?

The WITNESS. No; unless you call the 7½ ticket rate of the A. B. and W. local fare. That was mentioned.

Mr. HILL. No; I have in mind a straight 10-cent fare
350 now in effect, they were not to be changed under that proposal, were they?

The WITNESS. No, sir.

Mr. PRETTYMAN. Now, if the Commission please, I want to put in a series of exhibits showing how the present fares of the Capital Transit Company to the Pentagon Building were established, various obligations and orders of this Commission applicable to that matter, and I will do that through Mr. Merrill.

By Mr. PRETTYMAN:

Q. Mr. Merrill, have you a copy of the application of the Capital Transit Company for a temporary permit for Route R-2, the Pentagon Building?

A. Yes, sir.

Q. Is that a copy? (Handing paper to the witness.)

A. Yes, sir.

Mr. PRETTYMAN. May that document be marked as an exhibit?

Commr. PATTERSON. Mark it "Exhibit 61."

Mr. PRETTYMAN. Exhibit 61 for identification.

(Capital Transit Exhibit 61, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Does that application give the fare of 5 cents?

A. Yes.

Q. When was it filed?

351 A. It was filed May 19, 1942.

Q. Do you have a copy of the order of this Commission requiring a tariff?

A. Yes, sir.

Q. I will ask you if this is a copy of that order [handing paper to the witness].

Mr. PRETTYMAN. May this document be marked 62?

Commr. PATTERSON. 62.

Mr. PRETTYMAN. 62 for identification.

Exam. MATTINGLY. 62 is the letter of May 22, 1942, signed by the Secretary of the Commission?

Mr. PRETTYMAN. Yes, sir. 62 has several sheets to it.

Exam. MATTINGLY. 61 has several sheets.

Mr. PRETTYMAN. And 61 has several sheets.

By Mr. PRETTYMAN:

Q. Now, Mr. Merrill, do you have a copy——

A. (interposing.) This is a copy of the document you referred to. I did not answer that question.

(Capital Transit Exhibit 62, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Yes.

Do you have a copy of the tariff filed for Route R-2 [handing paper to the witness]?

A. Yes, sir. This is a copy of letter of transmittal and the tariff, the letter being dated May 22, 1942.

352 Mr. PRETTYMAN. Could this document be marked for identification as Exhibit 63?

Commr. PATTERSON. It may be marked "63."

(Capital Transit Exhibit 63, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Do you have a copy of the temporary authority for Route R-2 [handing paper to the witness]?

A. Yes, sir.

Mr. PRETTYMAN. May this be marked for identification "Exhibit 64?

Commr. PATTERSON. It may be marked "64."

(Capital Transit Exhibit 64, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Now, that temporary authority authorizing the filing of the tariff approving your application, which was for a limited time, I believe, did the company apply for an extension of the authority for the duration?

A. Yes, sir.

Q. Have you a copy of that application for the extension [handing paper to the witness]?

A. Yes, sir. This is a copy of it.

Mr. PRETTYMAN. May this document be marked for identification as "Exhibit No. 65"?

Commr. PATTERSON. It may be marked "Exhibit 65."

Exam. MATTINGLY. 65.

353-356 (Capital Transit Exhibit 65, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. These original applications all refer to the terminal at 23rd Street.

Did the Capital Transit Company apply for an extension of that route to 19th and C Street?

A. Yes.

Q. Have you a copy of—just go back a minute, Mr. Merrill—have you a copy of the order of the Commission extending the temporary authority until December 31, 1944 [handing paper to the witness]?

A. Yes, sir. This extends it to 1944.

Mr. PRETTYMAN. May this document be marked as "Exhibit No. 66" for identification?

Commr. PATTERSON. Mark it "66."

(Capital Transit Exhibit 66, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Now, go back to the matter of the extension of the route to 19th and C.

I asked you if you have a copy of that request for the extension of the route to 19th and C [handing paper to the witness].

A. Yes, sir; this is the letter of August 5th and constitutes such a request.

Mr. PRETTYMAN. May that be marked for identification "Exhibit 67?"

357 Commr. PATTERSON. Be marked "67."

(Capital Transit Exhibit 67, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Have you a copy of the request of the Commission for a tariff to 19 and C [handing paper to the witness].

A. Yes, sir, dated August 5th.

Q. Have you a copy of the tariff——

Mr. PRETTYMAN. May this be marked "Exhibit 68?"

Commr. PATTERSON. 68; this is marked "68."

(Capital Transit Exhibit 68, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Have you a copy of the tariff filed pursuant to that order [handing paper to the witness]?

A. Yes, sir. This is a copy of the tariff filed with letter of transmittal dated August 6, 1942.

Mr. PRETTYMAN. May that be marked for identification "Exhibit 69?"

Commr. PATTERSON. It will be marked "69."

(Capital Transit Exhibit 69, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Have you a copy of application of the Capital Transit Company for a temporary permit for Route O-2 to the Pentagon Building [handing paper to the witness]?

A. Yes, sir. This is a copy of the application, with
358 letter of transmittal dated December 29, 1942.

Mr. PRETTYMAN. May this be marked as "Exhibit 70" for identification?

Commr. PATTERSON. Be marked "Exhibit 70."

(Capital Transit Exhibit 70, Witness Merrill, marked for identification.)

Exam. MATTINGLY. Did you happen to notice on the copy of Exhibit 69 it says that this is a one way fare?

Mr. PRETTYMAN. Does that include subsidiary wars?

By Mr. PRETTYMAN:

Q. Mr. Merrill, have you a copy of the order of the Commission requiring tariff for Route 22 [handing paper to the witness]?

A. Yes, sir.

Mr. PRETTYMAN. May this be marked Exhibit 71 for identification?

Commr. PATTERSON. It will be identified as "Exhibit No. 71."

(Capital Transit Exhibit 71, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Have you a copy of tariff filed pursuant to the order [handing paper to the witness]?

A. Yes, sir; tariff filed with letter of transmittal dated January 2, 1943.

Mr. PRETTYMAN. May this be marked "Exhibit 72" for identification?

359 Commr. PATTERSON. Be marked "72."

(Capital Transit Exhibit 72, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Have you a copy of order of the Commission extending the temporary permit for Route Q–2 for the duration [handing paper to the witness]?

A. This extended to December 31, 1942.

Mr. PRETTYMAN. May this be marked as "Exhibit 73" for identification?

Commr. PATTERSON. It may be marked "73."

(Capital Transit Exhibit 73, Witness Merrill, marked for identification.)

By Mr. PRETTYMAN:

Q. Mr. Merrill, were any objections filed, either to tariff 75, 76, or 77, which are the three tariffs which you have identified, within the 30 days after they were filed?

A. Not so far as I know.

Mr. PRETTYMAN. I have no further questions.

If the Commission please, I will offer exhibits 61 to 73, inclusive.

Commr. PATTERSON. If there is no objection, the exhibits will be received and identified as Exhibits 61 to 73, inclusive.

(Capital Transit Exhibits 61 to 73, both inclusive, Witness Merrill, received in evidence.)

360 Col. BARRON. I think we have two or three more questions, please, sir.

Commr. PATTERSON. You may proceed, Colonel.

Redirect examination by Col. BARRON:

Q. This compilation of travel that you had prepared by the American Transit Association, 92 Madison Avenue, New York, I do not recall the number of that exhibit——

Exam. MATTINGLY. No. 60, is it not?

Col. BARRON. 60; yes, sir.

By Col. BARRON:

Q. Will you state whether or not that is a hand-picked list or a selected list of suburban companies?

A. I did not have it prepared; I simply asked what information was available and this is what I got. I did not enter into the selection or know how they were selected.

Q. Do you happen to have a copy of your request there?

A. I have a copy of the letter I received in return, I think. This is the letter. Do you want me to read it into the record?

Commr. PATTERSON. If it is a short letter, read it.

The WITNESS. Oh, yes; it is addressed to me under date of August 17, signed by Mr. G. C. Hacker, general secretary of the American Transit Association:

"Dear Ed:

"After talking to you, I have found that we had recently
361 compiled a list of suburban zone fare rates charged by transit companies in the eastern part of the country, copy of which I am enclosing. This shows the number of zones, the rate per zone, the average length of zone, and the average rate per mile, which I think is essentially what you want. If not, however, and if there is any additional information we can furnish you in connection with your hearing before the I. C. C. on rates to the Pentagon Building, please telephone me and we will endeavor to get it to you promptly."

I recall now, I think, that I asked for it by telephone rather than by letter.

Q. You did not ask for any particular list of certain selected routes?

A. No, sir; I asked for all that they had available.

Q. I see. These are primarily suburban companies?

A. That is correct. They are not interurban companies, primarily suburban services.

Q. Do you know the split in fares that was proposed or rate of return agreed to in connection with the Regional Committee recommendations as between the Capital Transit Company and the three Virginia companies?

A. You mean the split of rates between the——

Q. Yes.

A. Between the several companies?

Q. Yes, sir.

362 Mr. PRETTYMAN. We object to that as incompetent.

Commr. PATTERSON. Objection sustained to that, as to how they divide their own rates.

Col. BARRON. Didn't they introduce some evidence on that a while ago?

The WITNESS. Not in connection with the split of rates.

Mr. WHITTLESEY. If they did, it is in the record, no us denying it this time, and if we didn't, the question is surely improper.

Commr. PATTERSON. No; there is no division of rates in these exhibits.

Mr. WHITTLESEY. I see.

Exam. MATTINGLY. It is not in the report. If there is anything, I do not know it.

The WITNESS. Mr. Blanning's report suggested a division based upon the relation of the proposed fare to the 15-cent fare which we had previously agreed to.

Col. BARRON. Well——

That, however, was not the division later agreed to between the companies, and I just thought you might like, as a matter of information, to know what the companies thought was a reasonable division of the rates.

Mr. HILL. We object to it.

Commr. PATTERSON. That is quite another question. If there is a dispute between the companies as to what this division of rates is, we will not undertake to adjust it here.

363 Col. BARRON. I mean, what I am getting at, the initial division—it suggests that in his order and I thought this might give you considerable information as to what they thought.

Commr. PATTERSON. The Commission would not fix the division of rates.

Col. BARRON. Not in this hearing.

Commr. PATTERSON. Not in this proceeding, and if they object to the furnishing of the division of rates that they agreed upon among themselves, we would not be interested.

Col. BARRON. That is all right.

Mr. QUIRK. If I may suggest, the Commission has specifically held that,

First: It would not receive any evidence of divisions in a case involving joint through rates; and

Secondly: That it would not use a division as a measure of what a rate should be for the particular services covered by that division.

Col. BARRON. One more question now.

By Col. BARRON:

Q. Did your original 5-cent additional fare proposal to the Pentagon Building contemplate a loop bus line which would traverse both Lincoln Memorial and 14th Street Bridge and would allow a 5-cent ride to any point on the route?

A. Well, there have been a number of discussions as to loop lines and there are other methods of operation, but the pri-

364 mary thought was the service between Potomac Park region, where the previous employment locations of these people were.

Q. Yes.

A. Over to the Pentagon Building.

Q. But you did have some kind of a loop idea at one time there?

A. Well, yes; general discussions, yes, sir; it was a possibility.

Q. It was not in the form of a proposal, it was just a matter of discussion; is that right?

A. Well, it was among the plans drawn up one way and the other.

By Capt. DAVIS:

Q. Along that line, Mr. Merrill, I direct your attention to Exhibit No. 62, which you identified a few minutes ago, being—which includes an appendix to the order of this Commission dated 22nd of May 1942, and on the last page of that exhibit, I notice that this order authorizes service between the District of Columbia, Pentagon Building, and all intermediate points.

Can you tell us how long that was in effect?

A. Is that the—I am not sure that I have that exhibit particularly marked. It says on the face of it, the "authority herein authorized shall be for a period of 30 days, unless otherwise ordered."

Q. Now, in that connection, I direct your attention also to Exhibit No. 66, being an order of this Commission dated the 22nd of June 1942, in the appendix of the second page also there is authorization of service to all intermediate points.

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Now, was the service performed for very long under those two orders?

A. Well, if those are the temporary orders, it was a comparatively short time, and the fact that that permission is there, does not create traffic at those points.

Q. Well, did you render service at the intermediate points under those orders?

A. There was a pick-up of passengers within the District of Columbia, at various points other than the actual terminal at 19th and C Streets, and so far as I know, no pick-up or discharge of passengers outside the District of Columbia except at the Pentagon Building.

Q. Well, did you take people down as far as the water line or right across the bridge under those orders?

A. No, no; those passengers that were taken on in the District of Columbia went to the Pentagon Building, and so far as I know, there were no stops other than at the Pentagon Building.

Q. In other words, you did not comply with the authorization contained in these orders to render service at intermediate points?

A. Well, there was no particular origin or source of traffic at any intermediate points between the Potomac River and the Pentagon Building.

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Q. If a passenger wanted to get off within the District of Columbia, you were not willing to let him off under these orders?

A. Well, we evidently haven't had occasion to.

Q. Well, I notice that in the more recent orders you have requested authority only to serve over the whole line without any intrastate rights, this more recent order says no intrastate service will be performed.

Is there any particular reason for that?

A. No; I am not aware of any particular reason for any change in the former practices.

Q. The kind of service has been just the same, generally speaking, throughout the whole period?

A. Yes.

Commr. PATTERSON. Mr. Merrill, did you file a tariff in response to this authority?

Mr. PRETTYMAN. There are three tariffs put in evidence.

Commr. PATTERSON. Well, the tariff would show whether you did, would it not?

The WITNESS. Yes, sir; the tariff would show more definitely what was actually done.

By Capt. DAVIS:

Q. And you disregarded the tariff filed pursuant to these two orders?

367 Mr. PRETTYMAN. Exhibit 63, Your Honor, is the first tariff.

Commr. PATTERSON. 63.

Mr. WITNESS. The tariff in Exhibit 63 shows the words: "no intrastate passengers accepted."

Mr. QUIRK. You do not have right to carry intrastate passengers in Virginia, do you?

The WITNESS. No, sir. We do not.

Mr. QUIRK. Never have had, have you, under this Pentagon operation?

The WITNESS. Not under this operation; no.

By Capt. DAVIS:

Q. Well, in other words, the service authorized by the Commission and in the tariff you filed, you restricted yourself so that you would not hurt the feelings of these Virginia companies?

Mr. HILL. Wait a minute. The Commission did not authorize any intrastate service.

Mr. QUIRK. The Commission hasn't any authority to authorize any intrastate service.

Capt. DAVIS. Its order authorized services at intermediate points.

Mr. QUIRK. It can only authorize what it has power to authorize.

Mr. HILL. There is more than one point in the District.

Capt. DAVIS. You have authority from the District Pub-
368 lic Utilities Commission to the extent you operate in the District, haven't you?

The WITNESS. Yes, we have, for all of the routes provided by the Public Utilities Commission, the routing of these busses within the district is approved by the Public Utilities Commission of the District.

By Capt. DAVIS:

Q. So to the extent that these routes are within the District, and not deciding now where the District line is, you have proper authority from the Public Utilities Commission of the District to run these busses, don't you?

A. I think the authority is restricted to the routing of the busses, and that the authority for the carrying of passengers and doing business is with the Interstate Commerce Commission. I think that is a legal question I had rather have a lawyer answer.

Capt. DAVIS. Well, he has been asked to express an opinion on this question and I think we are entitled to have the opinion on the picture as a whole.

Mr. PRETTYMAN. He has not expressed an opinion, he described satisfactorily what they are authorized and we put the documentary evidence in. He has not expressed any opinion.

The Public Utilities Commission fixed the routes within the District, and that is all.

369 By Col. BARRON:

Q. Do you know whether or not passengers were picked up at other points other than at the terminals during any period, and if so, what time?

A. They were picked up at points other than the terminals for interstate trips?

Q. Yes.

A. But not for local trips.

Q. At no time for local trips.

A. Not so far as I know at any time.

Capt. DAVIS. Well, in other words, what you have done is to refrain from exercising the full authority which you have under the Interstate Commerce Commission order to operate to intermediate points.

The WITNESS. I am not aware that we have any such authority to do intrastate business under the order of the Interstate Commerce Commission.

By Col. BARRON:

Q. What about the local Commission's order?

A. The local Commission's order merely fixes the routes over which these interstate trips should run.

Q. But you had a loop arrangement such as you mentioned a while ago under the local Commission's authority, could pick them up?

A. Well, the Local Commission, as I understand, could approve authority to pick up the passengers and discharge the passengers along any route within the District of Columbia.

370 That, of course, has not been done yet.

Col. BARRON. It has not been done.

I think that is all I have.

Anything else?

Capt. DAVIS. Is there not someone else in your company that is more familiar with the extent to which you operate under these tariffs?

The WITNESS. Well, Mr. Locke would be more familiar with the actual passenger interchange to various points than I am.

By Capt. DAVIS:

Q. Well, has it been the intention of the company, generally speaking, to avail itself in full of the authority granted by the Interstate Commerce Commission and the Local Commission?

A. It is the intention of the company to operate between certain points in the District of Columbia to the Pentagon Building, serving the War Department.

We thought that was a part of our job to do that and the best and simplest way to do it was to handle it the way we have handled it.

It was not the intent to use these lines for the short haul of passengers within the District of Columbia, and, of course, we had no authority to do such things in Virginia, it was intended as a through express type of service to serve the War Department Building.

Col. BARRON. I think that is all I have.

371 Anything else?

By Mr. HILL:

Q. Mr. Merrill, you spoke of your 5-cent fare. I am not sure whether the record is clear on that, you have a series of 5-cent zones beyond the District Line in Maryland, do you not?

A. Yes, sir; where the [illegible] goes more than a mile and a half or two miles beyond the [illegible]rict of Columbia we have several zones.

Q. For instance, to Rockville, of which you spoke, there is more than one fare; you have more than one 5-cent fare?

A. Oh, yes; there is a series of fares between the District Line and Rockville.

Q. And there is——

Commr. PATTERSON. How long is your questioning going to take?

Mr. HILL. This is the last one.

By Mr. HILL:

Q. This agreement which the companies accepted for the fare into Virginia contemplated a charge ticket in connection with the streetcars also, did it not?

A. Yes; that was the expectation; the joint ticket, a portion of the joint ticket which was to be given to the Capital Transit was to be used either on street cars or busses.

Mr. WHITTLESEY. I had some cross-examination of this witness, sir, but if Your Honor has any idea of taking a recess, that is all right.

372 Commr. PATTERSON. We will take a five minute recess.

(A short recess was taken.)

Commr. PATTERSON. All right; Mr. Whittlesey, I think.

By Mr. LANE:

Q. Mr. Merrill, you testified a minute ago regarding your series of zones on the Maryland end of your line. Who fixes the rates for those zones in Maryland?

A. Those are fixed by the Maryland Public Service Commission.

Mr. LANE. That is all.

By Mr. WHITTLESEY:

Q. Mr. Merrill, in regard to this $1,500 amortization that was made by the R. F. C., was that made in contemplation of all the operation by those busses?

A. Well, it was made in contemplation of service to be rendered by those busses in our system as a whole; no particular reference to any particular service, but they were to be operated generally in our service wherever we needed busses of that particular character.

Q. Well, now, in regard to the negotiations originally, didn't you at any time enter into a contract or make a contract for the purchase of certain busses wherein it was specified that the fare to the Pentagon Building, if those busses were used in that service, would be 7½ cents?

A. No; we did negotiate these arrangements with the Defense Plants Corporation which provided for purchase of certain busses which would be used particularly in the Pentagon service.

373 The rate of fares specified in the agreement as finally accepted was 5 cents. There was some discussion of a 7½-cent fare which appeared to be necessary from our

estimate to meet the cost of the service and the necessary changes which they had to make and amortize the cost of the vehicles and with a certain stipulation as to the length of the spread of hours at the Pentagon Building, and the proposed cheaper grade of busses, and we finally got it down to 5 cents.

Q. Well, now, coming back to that $1,500, it was understood by all parties that those busses would not be used specifically for rush-hour service.

A. Well, it was not specifically understood, no. They were to be used in our general service wherever it was appropriate.

Q. Now, you do have one fare, do you not, in the District of Columbia, of 25 cents for a trip from downtown Washington through and around Hains Point with a privilege of stopover; is that correct?

A. We have such a fare. I should say we have had it, the line has not been actually operating for the last year or more, due to war conditions.

Q. Do you know whether there is any privilege of utilizing a transfer on that line or is that just a cash fare from a point downtown?

A. It is just a cash fare from a terminal point downtown to Hains Point and back.

Q. Now, your service between 19th and C and the Penta-
374 gon runs through Government parkways principally?

A. Well——

Q. I mean by that, is there any suburban area or any business area or anything down in there to which you can attract business?

A. No; there are no business areas, no suburban areas along that line.

Q. And in that way it then differs from your suburban Maryland routes; is that correct?

A. Yes; that is true.

Q. Do you consider that your suburban fare in Maryland through your zones is different from your down-town district fare due to those items that you mentioned here this morning; that is, the on and off traffic, and the one-way haul in the morning, and the one-way haul back at night, and those various things that you mentioned?

A. Well, there is much less chance for on and off traffic and two-way haul in rush hours in the suburbs than there is in the down-town area.

Q. And you took that into consideration in fixing the suburban fare; is that it?

A. Well, that is one of the considerations. Of course, in fixing fares, it is based upon an effort to get a reasonable fare for the

service rendered and for the cost of sustaining the operation; of course.

375 The fact that the traffic is not so much on and off in that area, and as a result the cost of rendering the service per passenger is higher in such territories than it is generally in city-wide service.

Mr. WHITTLESEY. That is all I have.

Commr. PATTERSON. Are there any other questions?

By Lt. MATTHEWS:

Q. Yes; I want to ask a question.

Mr. Merrill, you mentioned earlier that you had discussed a contemplated service over the District or Virginia end of the bridges in connection with your passenger service.

That was to be much the same kind of service that you give to Rosslyn, transporting the passenger to either one end of the bridge or the other and then there is transportation furnished or available, or did you contemplate having through transportation from those points?

A. No; in discussing plans of that kind we had in mind the possibility of our rendering the service to or near the District Line and somebody else providing service over in Virginia.

Q. And I suppose that would be on the same basis as the Rosslyn service with the District fare?

A. Yes; we would charge the regular district fare to some point near the district line with the idea that somebody else would collect the zone fare beyond the district line.

Q. Why was not that done? Was there a deficiency in

376 other transportation that makes that necessary?

A. No; it appeared that it would be a duplication of service for us to run to the district line at points where these Virginia companies had the service already existing and where they get in the reverse direction, service in the morning and in the evening they come back up, and pick up additional passengers from the down-town points.

Q. You also mentioned that your busses make the trip one way to and from the Pentagon empty. Isn't it true that you keep a number of busses there throughout the day?

A. Yes, we do; we did rather, bring them back, and it would be cheaper for us to bring them back to their own garages rather than park them over there, because under our agreement, we have to pay travel time to the operators. The amount of travel time involved with the operator parking the bus there and waiting around a few minutes to take a bus back to his home garage or to some transfer point actually running the bus back to the garage,

but we do it to save tire mileage and gasoline conservation more than any saving in cost.

Q. Are you able to use the busses of that Pentagon traffic for rush hours, other rush hours in the district?

A. Yes, to some extent we do; not entirely. I think there are some busses that go there and perform that service only.

Q. Don't you have on some of the other busses the practice of making a load in the rush hour one way and a trip empty?

377 A. Yes; we do. We have busses that run "no passengers" in order to get back to the end of the line in time to fit into the rush hour before the traffic piles up, thereby do an extra job.

Lt. MATTHEWS. Those are all the questions I have.

Commr. PATTERSON. If there are no more questions——

Exam. MATTINGLY. I have just one or two.

I wanted to ask you just one thing about this 7th and Constitution Avenue line.

As I understand, in order to get that 5-cent fare over to the Pentagon building on that line, the passenger must have either a transfer, or token; is that correct?

The WITNESS. He can pay his fare on the bus, cash for the token, or a transfer, or a weekly pass; and when he gets over at the Pentagon Building, going out through the turnstile he pays a nickel.

Exam. MATTINGLY. If he does not have a pass or a transfer, though, he has to pay the District fare plus the nickel over on the other side?

The WITNESS. Yes, sir.

Exam. MATTINGLY. Now, is that the same procedure in the reversed direction?

The WITNESS. Yes, sir; except that pays his fare at the start of the trip over at the Pentagon Building all at one time.

378 Exam. MATTINGLY. And is a pass or a token accepted over there in addition to the nickel on the return trip?

The WITNESS. Yes, sir; any part of the District side, plus the nickel.

Exam. MATTINGLY. That is all.

Commr. PATTERSON. You are excused, Mr. Merrill. Thank you.

(Witness excused.)

Mr. PRETTYMAN. Mr. Commissioner, I offered Exhibits 62 to 73 and forgot to offer Exhibits 56 to 61, which were also identified by Mr. Merrill.

Commr. PATTERSON. Yes. If there is no objection they may be received.

Lt. MATTHEWS. May we reserve the right to make such objections when we have copies of them, as I understand that we will have of this one, 61.

Commr. PATTERSON. Oh, yes.

(Capital Transit Exhibits 56 to 61, both inclusive, Witness Merrill, received in evidence.)

Commr. PATTERSON. Colonel Barron, you may proceed.

Col. BARRON. Yes, sir.

We have on the stand Mr. Kosh.

Commr. PATTERSON. Proceed.

Col. BARRON. When you were last on the stand, I think we had offered one of the 1940 income-tax returns of the
379 Capital Transit Company which had been marked for identification.

Under this general objection and ruling, I would like to go ahead and offer these tax returns, and of course, the objection as I understand it will be considered later on, so I will just have them marked for identification.

I had already offered as Exhibit 46 the income-tax return of the Capital Transit Company.

Mr. PRETTYMAN. Now, if Your Honor please, sir, I understand if these are marked for identification they will thereby become public property?

Commr. PATTERSON. They will not be received at this time by the Commission.

You may state what you propose to prove by them and save your objection.

Col. BARRON. Yes; I believe that the record already shows that what we propose to show by each of them, both as to revenues, over-all earnings, and of course, as a basis for the use of the returns as to specific items, we offer them as basic exhibits, and I believe the Captain explained that they contain various schedules referring to different——

Commr. PATTERSON. And the ruling shows to what extent the information would be accepted.

Col. BARRON. Well, now, for identification then, I will go ahead and offer them for the various companies and get
380 them under the rulings that you made, and I understand that you do not want to receive them physically, you just want them identified?

Commr. PATTERSON. That is right.

Col. BARRON. I have already offered the return of the Capital Transit Company as Exhibit 46.

Commr. PATTERSON. Yes.

Col. BARRON. I offer as War Department Exhibit 74, certified copy of the excess profits tax of the Capital Transit Company, certified by direction of the Secretary of the Treasury, by the Chief Clerk of the Treasury Department, certificate dated August 10, 1943, pertaining to 1942 taxes.

Commr. PATTERSON. And the same ruling.

(Army and Navy Exhibit 74, Counsel Barron, marked for identification.)

Col. BARRON. I now offer for identification the 1942 income-tax return, certified copy, same form, dated August 12, 1943, of the Montgomery Bus Lines, Inc., which I understand is a subsidiary of the Capital Transit Company, as the next exhibit.

(Army and Navy Exhibit 75, Counsel Barron, marked for identification.)

Mr. PRETTYMAN. Same objection.

Commr. PATTERSON. Same ruling.

Col. BARRON. I now offer for the year 1942, the excess
381 profits tax return of the Montgomery Bus Lines, Inc.

Mr. PRETTYMAN. Same objection.

Commr. PATTERSON. Same ruling.

Col. BARRON. Similarly certified.

(Army and Navy Exhibit 76, Counsel Barron, marked for identification.)

Col. BARRON. I now offer——

Mr. PRETTYMAN. If your Honor please, I would like to make the additional objection on the Maryland Company, as I understand it, the Maryland Company does not even come into the District of Columbia.

Mr. DUNLOP. The Montgomery Bus Line does not even come into the District.

Mr. PRETTYMAN. The last two exhibits.

Capt. DAVIS. I might explain the reason for that is in order to facilitate the reconciliation of the consolidated figures, we thought it was appropriate to have the Commission consider the figures in the two returns so that there could be a proper reconciliation as to the break-down of the Capital Transit Company.

Commr. PATTERSON. He offers the same objection and the same ruling will apply.

Col. BARRON. The next one is a photostatic copy—certified photostatic copy of the 1940 income tax return of the Alexandria-
382 Barcroft and Washington Transit Company, certified under date of August 10, 1943, and similarly certified by the Treasury Department.

Mr. QUIRK. We make objection to that.

Commr. PATTERSON. Same ruling.

Mr. QUIRK. The same objection has already been made.

(War and Navy Department Exhibit 77, Counsel Barron, marked for identification.)

Col. BARRON. I ask that the next one be 78, it is excess profits tax return of the Alexandria-Barcroft and Washinton Transit

Company. The date of the certificate is August 10, 1943, and similarly certified by the Treasury Department.

Mr. QUIRK. Same objection.

Commr. PATTERSON. Same ruling.

(War and Navy Department Exhibit 78, Counsel Barron, marked for identification.)

Col. BARRON. The next is the income tax return for the year 1942, certified copy of the Arlington and Fairfax Motor Transportation Company.

Mr. HILL. Same objection.

Col. BARRON. Of Arlington, Virginia.

Commr. PATTERSON. Same ruling.

(War and Navy Department Exhibit 79, Counsel Barron, marked for identification.)

Col. BARRON. The certificate is dated August 20, 1943, similarly certified by the Treasury Department.

383 Exam. MATTINGLY. That is 79, is it?

The REPORTER. Yes, sir.

Col. BARRON. The next one is income tax return—this is the excess profits tax return for the Alexandria and Fairfax Motor Transportation Company, dated August 6, 1943, and similarly certified by the Treasury.

Mr. HILL. Same objection.

Commr. PATTERSON. Same ruling.

(War and Navy Department Exhibit 80, Counsel Barron, marked for identification.)

Col. BARRON. The next is the 1942 income tax return of the Washington, Virginia, and Maryland Coach Company, Arlington, Virginia, certified copy dated August 10, 1943, and similarly certified by the Treasury Department.

Mr. WHITTLESEY. Same objection.

Commr. PATTERSON. Same ruling.

(War and Navy Department Exhibit 81, Counsel Barron, marked for identification.)

Col. BARRON. The next one is the excess profits tax return for the year 1942 of the Washington, Virginia, and Maryland Coach Company, certificate dated August 10, 1943, similarly certified by the Treasury Department.

Mr. WHITTLESEY. Same objection.

Commr. PATTERSON. Same ruling.

384 (War and Navy Department Exhibit 82, Counsel Barron, marked for identification.)

Mr. HILL. Mr. Commissioner, there is one thing that puzzles me a little bit about this, the official reporter has the exhibit. Now, in behalf of the Arlington and Fairfax, we do not

wish those to become in the nature of a public document, but I understand this is in the nature of tender of proof by the Colonel.

Exam. MATTINGLY. That is right. They will be numbered for identification and handed back to Colonel Barron.

Mr. QUIRK. That is right.

Exam. MATTINGLY. And whether or not they will finally go into the record will be determined later.

Mr. QUIRK. That is right.

Mr. HILL. Thank you.

Col. BARRON. We now offer in evidence, and ask that they be considered as part of the record in this proceeding, the annual reports filed by the three Virginia respondents for the calendar year 1942 under the Motor Carrier Act, annual report form A. These reports are designated as follows:

"Alexandria, Barcroft and Washington Transit Company, I. C. C. File No. 5048; Arlington and Fairfax Motor Transportation Company, I. C. C. File No. 506; Washington, Virginia and Maryland Coach Company, I. C. C. File No. 5086." Specifically,
385 we wish to offer the following pages and schedules, and will state the reasons.

Are those down here now?

Exam. MATTINGLY. No; I can have them though.

Col. BARRON. Yes.

Exam. MATTINGLY. Do you want to use them right now?

Col. BARRON. Yes, sir. Whether or not counsel want to follow these pages as I read the items, we think may be pertinent and material.

Mr. LANE. If the Examiner please, at this time we will object to the reports going into the record on the ground of the Commission's ruling on the over-all data.

Commr. PATTERSON. This is a report of his own file with this Commission.

Col. BARRON. Yes, sir.

Mr. QUIRK. It is not relevant.

Commr. PATTERSON. It is a report that is filed with the Commission?

Col. BARRON. Yes, sir.

Commr. PATTERSON. We will take judicial notice of that report for whatever it is worth.

Mr. QUIRK. Well, Mr. Commissioner, that goes to the very heart of everything. There are a lot of documents that are public that might not be relevant or material here but nevertheless are available to everybody.

Col. BARRON. We propose to cite the items and the reasons.

386 Commr. PATTERSON. That is right. As I understand, Colonel Barron proposes to pick out the items that are

relevant to this investigation. We will take a recess for a few minutes until he gets these reports.

(A short recess was taken.)

Commr. PATTERSON. Proceed.

Col. BARRON. These reports, as I have already stated, are all in the same general form. Pages 1 and 2 relate to the organization and control of the company. These pages set forth the names of the companies, their officers, and stockholders.

In view of the fact that considerable salaries are paid by these three companies to their officers and others, we believe it material to show that these salaries are paid to controlling officers and stockholders, for the purpose of supporting our position that adjustment should be made in earnings by the amounts of such excessive salaries; or at least, that to some extent, adjustments should be made.

Such adjustments will show, will be offered to show that the earnings are even more excessive than indicated by the books.

That is, particularly pages 1 and 2 we refer to, entitled: "Organization and Control."

Mr. QUIRK. Pages 1 and 2 merely show the names of the officers and directors.

387 Mr. LANE. Does not show any amount of salaries or anything else.

Col. BARRON. Those two pages only show the officers and directors, I believe. We will later show the pages that relate to salaries and compensation.

Mr. QUIRK. Is this a proffer just for the purpose of identification as with the other exhibits?

Col. BARRON. Of course. We are offering, of course, this in evidence, also.

Commr. PATTERSON. No; he is offering this in evidence.

Col. BARRON. Pages 6 and 7, I believe, are the balance sheets. Is that correct?

Mr. QUIRK. Yes.

Col. BARRON. The balance sheet, we believe, is material as bearing upon the companies' investments and properties, and give some indication of a proper basis for fixing a rate of return.

Furthermore, insofar as the operations of particular lines are concerned, it is necessary to refer to the balance sheet as the basis for making appropriate allocations of property to such lines.

Mr. QUIRK. There may be some of this information that we do not object to. I think it would be more orderly if we would object to it as we go along, and therefore, for the A. B. & W., I now object to the evidence, to the use of the evidence

388 that Colonel Barron has already referred to, on the ground that it is immaterial and irrelevant.

Commr. PATTERSON. That is the use of all evidence, the whole report.

Mr. QUIRK. He is using the whole balance sheet, now as affecting the reasonableness of these particular rates.

That brings us back to the questions we have had so much discussion about since the case started.

Mr. HILL. I join in the objection, Mr. Commissioner, my objection would be—so far as it relates to the rate of return, the valuation on any particular date, and the assessment.

Commr. PATTERSON. As it relates to the rate of return or the valuation on any particular date to the investment, we will not consider that.

Col. BARRON. That is what we are offering it for in part.

Mr. QUIRK. You say you will not consider that?

Commr. PATTERSON. We will not consider that.

Mr. QUIRK. In other words, your ruling, as I understand, Mr. Commissioner, stands up to now, the Commission did not overrule it?

Commr. PATTERSON. That is right.

Col. BARRON. It has not acted upon it.

Commr. PATTERSON. Has not acted upon it.

Mr. QUIRK. So the ruling stands?

Col. BARRON. On the same theory, then, that we offered
389 the income-tax returns, we will go ahead and make this proffer, and it might simplify matters if I could just list the reasons why the particular pages are offered.

Commr. PATTERSON. I think so.

Col. BARRON. Schedules 1200 and 1200–A. Carrier operating property. These statements show in more detail the property of the companies and are necessary for the same reasons as the balance sheet.

Schedule 1221–A——

Mr. LANE. What pages are you on, Colonel?

Col. BARRON. I am just reading this.

Mr. HILL. Which schedule have you read, then, Colonel?

Col. BARRON. 1200 and 1200–A.

The next is schedule 1221–A, passenger equipment. This information is deemed pertinent and essential both in facilitating an estimate of a fair return of return in showing as to particular lines concerned the number and type of busses used and the cost thereof, and the depreciation rate.

Mr. LANE. If the Examiner please, at this time we certainly object to that on the ground that it does not show the equipment used on the individual lines as stated by Colonel Barron in any of these records.

Mr. QUIRK. We make the same objection.

Col. BARRON. Schedule 1221-B, equipment retired.

Mr. QUIRK. Where are those figures?

390 Mr. LANE. 1221-D.

Commr. PATTERSON. Well, there is no allocation here, you are talking about the total amount of equipment?

Col. BARRON. Yes, sir.

Commr. PATTERSON. The same ruling would apply with respect to that.

Col. BARRON. Yes, sir. We have no way of making a segregation, of course.

This schedule indicates the equipment retired on the books prior to actual retirement from service, and therefore indicates that the annual depreciation accrual may be excessive.

Schedule 1500 and 1550. Organization, franchise, permits, and other intangible property, I believe, is the heading.

These schedules, we believe, should be considered in determining the extent to which balance sheets items show actual property.

We contend that the larger intangible items, not representing actual investment, should be eliminated for the purpose of fixing a fair rate of return.

Schedule 2120. Taxes accrued—these items should be considered as an important element in the companies' income statements.

It is our view that under the Commission's decisions, certain taxes should be excluded and the amounts should there-

391 fore, be shown for the Commission's information.

Schedule 2300 and 2360, entitled, "Equipment Obligations and Debt."—The amount and charges on debt of these respondents are significant elements but in fixing a fair rate of return, both in determining the value of the companies' properties, and in fixing an appropriate rate of return.

Schedule 2500. Depreciation Reserve.—The depreciation reserve is an important item in the companies' properties and income and must be considered by the Commission in connection therewith.

Schedule 2900. Unearned Surplus.—This schedule shows amounts of unearned surplus of one or more of the respondents, and in one case shows large fluctuations. These facts should be considered by the Commission in passing upon the reasonableness of the rates.

Schedule 2998. Income Statements.—The income statement is important to show that the companies are earning an excessive rate of return. In addition, the income statement, when considered together with operating statistics, shows cost per mile which may be applicable to individual lines of the companies.

Schedule 4001. Detail of Operating and Maintenance Expenses.—These items are essential to a proper analysis by the Commission of the operating expenses; both in determining a fair rate of return and for allocating costs to particular
392 lines.

Schedule 5000. Depreciation Expense.—The annual depreciation is a significant factor in the companies' income account. It is believed essential that this be broken down so that it will permit an analysis of the reasonableness of the accrual. Furthermore, the depreciation accrual on equipment may, in turn serve as a basis for allocation to particular lines.

Schedule 8000. Provision for Income Taxes.—This information, we think, essential for the same reasons as Schedule 2120, since more detail is shown for income taxes. Furthermore, a break down as between Federal Income and Excess Profits Taxes is important as being related to the companies' property which should be used as a basis for determining a fair rate of return.

Schedules 9001, 9001–A, 9001–B. Routes operated.—This information is essential so that the Commission will have before it the exact subject matter of the proceeding with respect to locations of operations, and length of routes.

Mr. QUIRK. My page is blank, the A. B. and W. page is blank on this book. It will be a great help to the Commission.

Commr. PATTERSON. He may have to get at you some other way, we may have to, for filing blank pages.

Capt. DAVIS. There are different figures for the different companies but I believe something is shown on some of the
393 companies under that schedule.

Col. BARRON: Schedule 9002. Employees.—This schedule indicates the scope of operations and particularly the number and salaries of general officers in relation to the number of other employees as supervisors.

Mr. QUIRK. Which one was that?

Col. BARRON. Schedule 9002, Employees.—In this connection, we also desire to offer Schedule 9002 from the annual reports of these three respondents for the years 1939, 1940, and 1941. These reports are offered as showing the changes in officers' salaries resulting in large increases for the year 1942.

Schedule 9005. Operating Statistics.—These figures are, we believe, material in showing both over-all operations and for use as a basis for allocating costs to the particular lines involved.

And we also desire to offer at this time the quarterly reports of the three respondents filed for the two quarters ended 30 March, 1943, and 30 June 1943, on Interstate Commerce Commission Form "Quarterly Reports of Revenues, Expenses, and Statistics."

Commr. PATTERSON. Those reports, we will take judicial notice of those reports as a fact.

Col. BARRON. Yes, sir; just as you did in the case of the Capital Transit Company.

394 Commr. PATTERSON. That is right.

Col. BARRON. These reports show the most recent revenues, expenses, and statistics, and are pertinent for the same reasons as similar material in the annual reports.

They also show a continual trend of increased income of these companies.

Monthly reports.—We desire to offer specifically the monthly report for the month of July 1943, for each of the respondents, which show revenues, passengers, and bus miles operated, for the purpose of indicating the increased trend of revenues and income, and in order to supplement the other figures heretofore introduced.

Mr. LANE. What, the monthly report?

Col. BARRON. July 1943.

Mr. LANE. I know, but what specific report are you referring to, monthly reports to whom?

Mr. HILL. Yes.

Capt. DAVIS. To the Commission. We understand that that is the only one that is on file.

Mr. LANE. With the Commission?

Capt. DAVIS. That is our understanding, sir, that it is a little report filed with the Commission showing the items referred to, a little report, a little white form.

Commr. PATTERSON. Can you identify the report so that we can identify it in our files?

395 Capt. DAVIS. It is a little white form.

Col. BARRON. In reference to the monthly report, we will take up during the noon recess and make certain about that.

Capt. DAVIS. It is my understanding, sir, that they do have such a report and file such a report within 30 days after the close of the month, so I presume they should be on file.

Mr. QUIRK. It is understood that we have objected to all of this data that has been offered, we do object to it.

Commr. PATTERSON. And the ruling is the same as before.

Col. BARRON. Yes.

We also offer as the next exhibit, I do not know the number, I think it is 83. This is a copy of the annual report of the Capital Transit Company filed with the District of Columbia Public Utilities Commission for the year 1942.

This report shows a detailed financial data concerning the Capital Transit Company.

Schedules 101 to 107 deal with corporate history, stock-holdings, and control of the company.

Schedule 200–A contains the balance sheet.

Schedule 211 shows break down of road and equipment property.

Schedules 213 and 285 show details of various balance sheet items. Particular attention is directed to Schedule 261–N, showing debt, and 261–E showing equipment obligations.

396 Schedule 285–A shows depreciation rates.

Schedules 300–P to 396 show profit and loss accounts. Particular attention is directed to Schedule 350 showing taxes.

Schedules 411–A, B, and C show tracks operated.

Schedule 415 shows mileage and other statistics.

Schedules 417 and 417–A show number of employees and their compensation.

Schedules 418 and 419 show compensation of officers and of attorneys and experts.

Schedule 420 shows details of types of equipment.

Schedule 492 shows changes in tracks.

The purpose generally is that such financial information is deemed necessary to permit adequate appraisal of the reasonableness of the rates charged and the statistical information is important in judging the type of service and——

Mr. DUNLOP. If it is proper——

Col. BARRON. ——to secure a proper computation of the unit cost.

I think that is the remarks, all of the remarks we wanted to make in reference to this.

Mr. DUNLOP. We object to the introduction of this testimony and for the same reasons and I presume the same ruling will apply.

Commr. PATTERSON. And the same ruling.

397 MR. DUNLOP. Insofar as it does not pertain to this particular Pentagon operation.

Commr. PATTERSON. That is right, insofar as it cannot be related to the service under consideration here.

Col. BARRON. Of course, we contend it does have direct relation, all of it, because it is all intermingled service.

Mr. DUNLOP. Of course, it is our view that it is not intermingled.

Exam. MATTINGLY. Have you a copy of that?

Col. BARRON. We made copies of that.

Exam. MATTINGLY. Have you submitted a copy of it to the reporter?

Col. BARRON. Yes, sir.

Exam. MATTINGLY. Do you have an extra copy?

Col. BARRON. We have one other extra copy; yes, sir.

Exam. MATTINGLY. That will be No. 83.

(War and Navy Exhibit 83, by Counsel, marked for identification.)

Mr. LANE. Will there be copies of that for counsel?

Col. BARRON. That is quite a large document. It is on file with the District Commission and of course can be readily gotten by the other respondents.

We do not want to go through the expense of having all that photostated if we can avoid it. It only relates, of course, to one respondent, the Capital Transit Company.

398 Mr. QUIRK. And it only relates to the pages that you have referred to?

Col. BARRON. That is correct.

Exam. MATTINGLY. Yes, sir.

Commr. PATTERSON. This need not go into the record physically, because this is for general examination and it is available to anybody.

Col. BARRON. We have only referred to a limited number of items in the report that we think are material.

Commr. PATTERSON. Yes; I understand.

Col. BARRON. Now, Mr. Kosh—first—

I offer for identification and ask that it be marked as the next exhibit, an exhibit captioned:

"War Department—Capital Transit Company—Net Investment, Dated December 31, 1942."

which shows that the data obtained in the compilation of the exhibit is also filed by the company with the Public Utilities Commission of the District of Columbia, except as otherwise noted.

(War and Navy Exhibit 84, Witness Kosh, marked for identification.)

Col. BARRON. I will now call Mr. Kosh.

D. A. KOSH was sworn and testified as follows:

399 Direct examination by Col. BARRON:

Q. Do you have a copy of that document there, Mr. Kosh?

A. Yes.

Mr. PRETTYMAN. Is any of the data on this exhibit drawn from the income-tax return?

Col. BARRON. This is from the Public Utilities Commission.

The WITNESS. Not on this particular first page but some of the others; yes.

Mr. PRETTYMAN. Well, if some of the other pages are drawn from the income-tax return, then I will object to the introduction

of the exhibit insofar as it draws information from the income-tax return.

I do not object to any of the information that may come from the report to the Public Utilities Commission.

Commr. PATTERSON. Is there a part of this information which is taken from the income-tax return?

The WITNESS. Two figures are taken out of the income-tax report, report of income, normal and surtax reported to the Internal Revenue, and the excess-profits taxes, nothing else.

Col. BARRON. That is also in the report.

Commr. PATTERSON. So far as this exhibit is concerned, we will not let this go in physically as long as it shows part of the income-tax return. That we think is not necessary here and it does provide an opportunity to make a part of this income-tax return public, and which data we think is not necessary
400 here.

Exam. MATTINGLY. Can you segregate the part of this exhibit that is not taken from the income-tax return from the rest of it?

Col. BARRON. I would rely on the witness who is an expert statistician and accountant.

The WITNESS. In determining earnings for the company we had available the amount reported by the Capital Transit Company to the Public Utilities Commission of the District for normal, surtax, excess profits taxes, accrual figures.

Commr. PATTERSON. That is for their whole property?

The WITNESS. That is for their whole property. In here we have, in these exhibits, used some of the figures, except that they are not accrual figures, as reported to the Commission, but figures as reported to the Internal Revenue Department.

Now, those figures come in right at the beginning in determining net earnings, the sixth page of the exhibit, I believe, and the result of that are used throughout the rest of the exhibit.

They are figures that appear, figures put in before the Public Utilities Commission, and there is a discrepancy between those figures.

Mr. DUNLOP. They are not used for the purpose of determining net returns so far as the Public Utilities Commission is concerned, are they?

401 The WITNESS. How the Public Utilities Commission uses them, I do not know.

Mr. DUNLOP. They do not appear in that Public Utilities Commission report as affecting the net earnings?

The WITNESS. As I explained to the Commissioner——.

Mr. HILL. You ought to know.

The WITNESS. The figures reported on the Public Utilities Commission report are the—are not the same as those I have used, those appearing on the return filed with the Public Utilities Commission of the District of Columbia.

Mr. PRETTYMAN. Of course, there are accruals made during the year for accounting purposes, and the income tax return is made after the end of the year. They are two different things.

The WITNESS. However, in the case of the other three companies, that discrepancy does not exist except for minor technicalities.

Mr. PRETTYMAN. Well, I do not know.

The WITNESS. Well, the point is your own.

Commr. PATTERSON. I will sustain the objection so far as this exhibit is concerned this time because it does have figures that are put in here indirectly, which we have rejected as direct figures.

By Col. BARRON:

Q. For the purpose of identifying this exhibit and showing what it does show and so forth, state who compiled it, if you know?

402 A. I compiled the exhibit. The sources are indicated.

The first figure labeled "Undepreciated Historical Cost as of December 31, 1935," was taken from the Public Utilities Commission of the District of Columbia Order No. 1713, dated August 29, 1938, on page 17 of the order, that figure of $29,037,549 will be found.

Mr. LANE. What number is this?

Exam. MATTINGLY. This is No. 84, marked for identification but not received physically or otherwise yet.

Mr. LANE. O. K.

The WITNESS. The next figure "Net Property Additions since 12–31–35" the figure of $15,819,674, is taken from the company's report to the District Commission and includes the net property additions of December 31, 1942, since December 31, 1935.

The third figure in that column is simply an addition of the two.

The next figure labeled "Reserve for Depreciation" $13,569,622, I have also taken from the report to the District Commission.

Subtracting those two figures we get the net property figure of $31,287,601.

The figure for materials and supplies, $866,776, is taken from the company's report to the District Commission.

The sum of those last two figures which I have labeled:

403 "Net Investment," is $32,154,377.

Col. BARRON: Of course, we offer each and every figure in evidence.

The same ruling applies, of course?

Commr. PATTERSON. Same ruling applies.

Col. BARRON. All right.

By Col. BARRON:

Q. Now proceed to the next page of the exhibit.

This is entitled "Capital Transit Company—Working Capital" and indicates the source and manner in which the various computations are made.

Will you state, if you know, who prepared this page of the exhibit, Mr. Kosh?

A. I prepared this page of the exhibit.

Q. And what material did you use in the preparation of the figures here shown?

A. These figures—most of these figures, except that in the explanatory note in the body of the exhibit, are taken from the reports to the District Commission. One of the figures in the explanatory note is taken from the figures reported to the Internal Revenue Bureau.

The first figure is "Total Operating Expenses and Taxes," $19,548,000—

Mr. PRETTYMAN. Before you read that figure, does that include data taken from the income tax return?

404 The WITNESS. That first figure?

Mr. PRETTYMAN. Yes.

The WITNESS. No; it does not; total operating expenses and taxes. Wait a minute. (Short interruption.) No; it does not.

By Col. BARRON:

Q. What about the second figure?

A. "Income Taxes (as Accrued)."

Mr. PRETTYMAN. Before you read that figure, does that come from the income tax return?

The WITNESS. No; the accrued figure does not.

Mr. PRETTYMAN. Of course, my objection goes to the materiality.

The WITNESS. The difference is "operating taxes, expenses, and rent," and excludes the accrual for income taxes.

For the comparison of that last $16,000,000 figure, the $839,011 is an estimate of working capital.

As indicated in the footnote, this method of taking 5 percent of operating expenses, rent, and taxes, as a reasonable allowance for working capital is the method used by the Cost Section of the Bureau of Transportation Economics and Statistics of the Interstate Commerce Commission in its most recent consideration of this problem in I. C. C. Docket No. 28,190.

In the first page of the exhibit, I did not make an allowance and additional allowance for working capital, for the
405 reason explained.

I might say this, that—and for this reason, that the amount of income taxes as accrued by the company or paid by the company, whichever you prefer, is so far in excess of the requirements for working capital, and the fact that the company does not pay taxes, Federal income taxes, until March of the following year, March 15th, and then only is liable for one-quarter, that in effect the customers prepay and the utility holds, practically a full year's income taxes at all times.

The company has collected that sum for income taxes accrued or paid which is in excess of the requirements for working capital.

I have made no additional allowance for that under net investment.

Col. BARRON. I think a good deal of his testimony is admissible, it is outside of the prohibited zone.

Commr. PATTERSON. Yes; I think so.

Col. BARRON. Go ahead. Have you any further explanation you wish to offer?

The WITNESS. No; except I might say this; that is, that one figure there which I took from the reports to the Internal Revenue Bureau. If you should substitute for that an accrual figure, it would just strengthen the argument since the accrual figure is larger than the paid figure and hence the company would
406 have the benefit of the accrual figure as reported to the Public Utilities Commission.

If that figure were put in there, the actual effect of the exhibit would not be changed at all.

Mr. QUIRK. Except it is reflected on the exhibit?

The WITNESS. Yes.

Mr. QUIRK. What is it?

Commr. PATTERSON. The exhibit has not been received.

Mr. QUIRK. Aren't we doing indirectly, Mr. Commissioner, what we did not do by an exhibit, we are putting into the record the figures on various exhibits prepared by the War Department?

Commr. PATTERSON. He is testifying as to what he purports to or proposes to show by this exhibit.

He is not showing anything, he is testifying to what he proposes to show.

Mr. LANE. As to how he arrives at it.

Commr. PATTERSON. That is right.

Col. BARRON. I now offer the exhibit in evidence.

Commr. PATTERSON. The ruling is the same on this offer, and we will take a recess until two o'clock.

(Whereupon, at 12:30 p. m., adjourned until 2:00 p. m.)

407 AFTERNOON SESSION—2:00 P. M.

Commr. PATTERSON. Proceed.

Col. BARRON. I would like for Mr. Kosh to yield for just a moment, we want to put Mr. Heberle on for just one or two questions.

J. E. HEBERLE was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Please state your name, address, and present occupation.

A. J. E. Heberle, 1016 Sixteenth Street, North West, and I am vice president and comptroller of the Capital Transit Company.

Q. And how long have you held that position?

A. Since the inception of operations of this company, December 1, 1933.

Q. Will you state, Mr. Heberle, the amount of taxes, income and excess profits taxes separately, your company paid to the Federal Government for the year 1942.

Mr. PRETTYMAN. If the Commission please, we object on the ground that it is immaterial and an over-all figure, and therefore, inadmissible under the ruling.

Now, as I understand it, Colonel Barron is about to make a proffer of certain testimony which we suggest go in by the answer of the witness over the objection, or Colonel Barron
408 can state what he offers to prove by the witness. Otherwise the proffer of the figures would get into the record.

Col. BARRON. In other words, you are making just a general objection?

Mr. PRETTYMAN. Objection that it is immaterial.

Col. BARRON. They limit the objection to the income tax figure.

Commr. PATTERSON. What is the question? Let the reporter read it.

(Question read.)

Commr. PATTERSON. I think that can be received subject to objection.

Mr. PRETTYMAN. It is understood it is Colonel Barron's proffer of the figure?

Commr. PATTERSON. Yes.

The WITNESS. The amount paid for the year 1942 would represent, the amount 25 percent is the first payment, but I understand that what is wanted is the full amount of tax payable, according to the income tax return?

By Col. BARRON:

Q. That is correct.

A. For the year 1942, the normal and surtax called for by the Capital Transit Company tax return for the year 1942 is $1,506,596.45, and the excess profits tax for the same year $601,482.72, a total of $2,108,079.17.

Q. Will you state the figures of the Montgomery Bus
409 Company, for the same year?

A. The corresponding figures for Montgomery Bus Lines, Inc., normal and surtax $576.32 and excess profits tax $17,370.67, a total of $17,946.99.

I might state that in the case of the Capital Transit Company the excess profits taxes that I have given in the amount of $601,000 odd, is after the deduction of post-war credit which Capital Transit Company was able to avail itself of because of cost, interest cost, and reduction in debt, and so forth, and so, under the Act, while Montgomery Bus Lines, the $17,000 odd is full amount of excess profits without taking into consideration the post-war credit.

Q. The post-war credit, how much is that?

A. It would be approximately $1,737.06.

Q. All right.

A. For the Montgomery Bus Lines.

Col. BARRON. Yes, sir.

I think that was all for the moment we wanted from this witness. Of course, we will need him later, on other matters.

(Witness temporarily excused.)

Col. BARRON. Mr. Kosh.

D. A. KOSK resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

Col. BARRON. There remains of this series of pages of
410 Exhibit 84 which Mr. Kosh had started to explain, separately, 13 separate tabulations of the Transit Company, the Capital Transit Company.

I think it might save time to offer them as one exhibit instead of separate pages.

Do you prefer that I identify each one of them for the record?

Commr. PATTERSON. Show the number of pages and describe them.

Col. BARRON. All right.

I will ask the witness to examine the first one.

I ask that they be marked.

Exam. MATTINGLY. Have you copies?

Col. BARRON. He has copies there.

Exam. MATTINGLY. We have not received a copy.

Mr. PRETTYMAN. May I make a suggestion at this point? At conferences between counsel during the noon recess, this noon, the manner of making the proffer by Colonel Barron of the amount of income tax paid that has just been done by putting Mr. Heberle on the stand, was suggested as a means of avoiding additional objection to the income tax return and the figures shown by the income tax return.

Now, in connection with that discussion, this exhibit was discussed and I had the additional objection to the exhibit as
411 written that it contains at various points the amount of taxes paid and drawn from the income tax return.

Now, in order to save time and to expedite the proceeding, may it be understood that wherever tax data is drawn from the income tax return and is read, it is to be understood that all objections—our objection to it goes to the over-all objection that the whole thing is immaterial.

Col. BARRON. We agree.

Mr. PRETTYMAN. And that agreement was to keep from having to rewrite the exhibit and avoid delaying the proceeding.

Col. BARRON. We will be glad to correct it—we agree to that because we want to go ahead, we could rewrite the exhibit on the basis of the Public Utilities report, and we will arrive at practically the same result.

Commr. PATTERSON. I see no objection to it.

Col. BARRON. So we will call all of these pages Exhibit 84.

Exam. MATTINGLY. Yes.

By Col. BARRON:

Q. Will you state whether or not you prepared all of this exhibit, all 15 pages of it?

A. Yes, I did.

Q. And from what source was the data principally taken?

A. The data was taken principally from the reports filed with the Public Utilities Commission of the District of Columbia.

Q. Do the footnotes show where they came from with
412 the exception of the amendment here?

A. Yes, sir; with that exception, that is the case.

Q. Showing the caption on the remaining 13——

Exam. MATTINGLY. Let's get this straight now, I do not understand it.

Are there only 13 pages to this exhibit?

Col. BARRON. No; there are 15, but we have described the first two.

Exam. MATTINGLY. You have already discussed those, have you?

Col. BARRON. Yes, sir. Mr. Kosh discussed those before the noon recess.

Exam. MATTINGLY. All right. 15-page exhibit, and the first page is net investment.

Col. BARRON. That has been discussed.

Exam. MATTINGLY. Yes.

The WITNESS. That is the way that first page is headed, and the second one is working capital.

Exam. MATTINGLY. Yes.

The WITNESS. That is right.

Exam. MATTINGLY. Now, you are going on from there?

Col. BARRON. The next is Capital Transit Company net investment, first six months of 1943.

Exam. MATTINGLY. That is page 3.

Col. BARRON. Yes.

413 Exam. MATTINGLY. Perhaps we had better number the pages.

Commr. PATTERSON. Better number them. Which is the third sheet; it does not appear?

Exam. MATTINGLY. Page one is net investment, December 31, 1942.

Col. BARRON. That is right.

Exam. MATTINGLY. Page 2 is the working capital.

Col. BARRON. Yes, sir.

Exam. MATTINGLY. Page 3 is the working capital. of—mine says 1843, but I suppose that it should be 1943.

The WITNESS. That should be 1943.

Col. BARRON. 1943.

Exam. MATTINGLY. That is page 3.

Page 4 is taxes, 1942?

Col. BARRON. That is right.

Exam. MATTINGLY. Page 5 is war tax adjustment, 1942?

Col. BARRON. Yes, sir.

Exam. MATTINGLY. Page 6 is earnings, 1942?

Col. BARRON. That is right.

Exam. MATTINGLY. Page 7, earnings for 6 months, 1943. Page 8, comparative earnings statement.

Col. BARRON. That is right.

Page 9, injuries and damages reserve.

Page 10, rate reduction, to bring rate of return to 5

414 percent after all taxes.

Page 11, rate reduction to bring rate of return to 5½ percent after all taxes.

Page 11, the same thing, only 6 percent.

The WITNESS. That is 12.

Mr. PRETTYMAN. Line 12.

Exam. MATTINGLY. Page 12, that is correct.

And page 13, tax gross, 1942.

The WITNESS. That is right.

Exam. MATTINGLY. Page 14, tax adjustment, 1942; page 15, taxes, first six months of 1943.

Col. BARRON. All right.

Captain Davis will proceed to interrogate the witness on the exhibits.

By Capt. DAVIS:

Q. Will you refer to page 3 of Exhibit 84, which is captioned "Net Investment," that heading should be "First Six Months of 1943," should it not?

A. I think it would be better if it were June 30, 1943. It is not the net investment during the six month, it is at the end of the six months. That title is not very good. It would be better if it read "June 30, 1943."

Q. Well, now, is this the same as page 1 of the exhibit with the exception that you have made adjustments to bring it up to date as of June 30th?

A. That is right.

415 Q. These are the most recent figures available at the time you prepared the exhibit?

A. That is correct.

Q. Now, will you refer to page 4 of Exhibit 84?

A. Yes, sir.

Q. What does this sheet show, generally?

A. This shows the tax gross as reported by the company for all of the tax figures as just indicated by Mr. Heberle with this one exception, that towards the bottom of the page of the Montgomery Bus Lines (b) where it says "excess profits tax (net)," that figure is not the same as the one indicated by Mr. Heberle as he testified as indicated; the gross excess profits tax payment without the post-war credit, the difference in the figure he gave there and the $15,634 is besides the post-war credit of 10 percent of the figure Mr. Heberle gave.

Q. What is the reason that you left it out there?

A. Well, that 10-percent payment is a payment that the company now may accrue but which the Federal Government has indicated it would return after the war, as the title shows, a post-war credit.

Q. Which is in effect an asset on the company's books?

A. That is correct.

Q. Even though it may not be formally set up as such?

A. That is correct. I might further say that the ac-

416 counting with respect to that item varies among companies, indicating the net excess profits taxes, certain companies indicate gross taxes.

Q. And is it in your opinion as financial analyst and accountant that it is more appropriate to consider it as an asset rather than as an expense?

A. That is correct, the actual expense to the company is the 81 percent rate, the net figure.

Q. Now, Mr. Kosh, will you refer to the next page, page 5 headed "War Tax Adjustment." What do you mean by war taxes?

A. I can explain it this way: The income tax rates, Federal income tax rates have increased very materially in the recent years, especially so since 1939.

The reason for that, or the purpose of the increase was due to the existence of the war, and the preparations we made prior to our formal entry into the war.

We find that 1939 is the last normal year or at least normal to this extent that income tax rates, rather, were not affected by the war situation.

The tax rates for 1940, 1941, and 1942, were what they were because of necessities of the war. They were abnormal taxes, and I have labeled those increased taxes due to the war as war taxes. More formally designated, you could say this, the income tax rate in 1939 was 19 percent, there was no excess-profits
417 tax in 1939, hence, any excess-profits tax payment could be considered as having resulted because of the war.

Any taxes paid at rates higher than 19 percent were paid because of the war. Hence, this adjustment which considered ex press profits taxes as war taxes, which considers all taxes higher than 19 percent as war taxes.

Q. That results in this separation under which you have approximately $1,400,000 war taxes and $959,000 as what we might call normal or pre-war taxes.

A. I would rather not use the word "normal" because normal has a technical meaning when we speak of taxes. The war taxes have different meaning from normal or ordinary taxes, your normal tax.

Q. Now, in your opinion as a financial analyst an expert on Public Utilities matters, do you feel that in figuring the rate of return for a company, you should at least exclude the war tax?

A. My feeling is, and I believe the I. C. C. has so held, that in figuring the rate of return and earnings it should be before all income taxes, and certainly in time of war if any tax should be included war taxes should certainly not be included.

Q. So that this "pre-war tax" as designated on page 5 of this exhibit is the maximum which should be allowed, if any taxes should be allowed, as an operating expense?

A. That is right.

418 Q. Will you turn now to page 6 of Exhibit 84?

A. Yes, sir.

Q. This exhibit is captioned "Earnings, 1942." What is the source data for this page?

A. With the exception of income taxes which were obtained, as previously explained, the other data is gotten from the reports filed by the company with the District Commission.

The first figures, total operating revenue for 1942, twenty-four mollion dollars some odd, total operating expenses exclusive of depreciation and all taxes, that is, operating expenses; that is, operating taxes and income taxes, are $2,124,000 some odd, resulting in $6,630,482 after the depreciation, but before all taxes, that is income and operating taxes.

The company paid in non-income taxes, other than—that is, taxes, other than income taxes, $1,489,000 some odd, which would leave $5,141,335 or what I have called "net income (before income taxes)."

If you want to relate that to an account or a label as given in the I. C. C. system of accounts, it would correspond to what is now called "Net Operating Income."

It is the income after all expenses except income taxes.

The next figure "pre-war taxes" $959,000 some odd is the figure obtained from the previous exhibit.

Exam. MATTINGLY. The previous page.

419 The WITNESS. Excuse me. Previous page. Which would leave a net income which I have labeled "Net Income (before war taxes)" $4,181,870, and that would correspond to the figure you spoke about in principal a while ago, if the company were allowed any income tax without granting that it should be, but if they were allowed any income tax, should be allowed this, this pre-war tax, and that would be net income.

Then the balance of the war taxes, as indicated as $1,408,000 odd leaving $2,773,488, the net of the capital after all expenses, depreciation, and all income taxes of whatever kind.

By Capt. DAVIS:

Q. Referring now, Mr. Kosh, to the figure opposite the word "depreciation."

A. Yes, sir.

Q. Being $2,124,000, approximately, can you state whether that is substantially comparable to the amount shown for previous years?

A. No, this was charged at rates higher than those of previous years.

Q. How much was the increase, approximately, per year?

A. That increase, I might mention, was the result of Public Utilities Commission order the early part of this year, which raised certain of the depreciation rates, and it was estimated by either the company or the Commission, I do not remember which, that
420 the increase would be about $250,000 a year as a result of that increase in depreciation rates.

Q. Now, at the bottom of this exhibit is shown "Rate of Return," and before income taxes, 16.0 percent, (b) before war taxes 13.0 percent, and (c) after all taxes 8.6 percent.

Will you tell us how far that rate of return was computed?

A. Yes, sir.

Q. In other words, what do those percentages represent?

A. Each of those percentages represents the percentage ratio of net income to the net investment indicated on page 1 of this exhibit.

In other words, the 16 percent is obtained by dividing $5,141,335 of net income before income taxes by the net investment figure on the first page, $32,144,377.

Similarly, if you took the amount labeled "Net Income (before war taxes)" $4,181,870 and divide it by that same net investment of $32,000 some odd, you would obtain 13 percent.

Then if you took net income after all taxes, that is, the net income according to the company after all Federal, all taxes, the return on that net investment would be 8.6 percent.

Q. And that net investment, in your opinion, represents an approximation of an approximate rate base for this company?

A. I certainly think it is a fair approximation, yes.

Q. In so far as you have been able to determine from the records?

421 A. From the records; yes, sir.

Q. Now, will you refer, please, to page 7 of Exhibit 84. What does this exhibit show generally?

Exam. MATTINGLY. This page.

The WITNESS. That is a parallel exhibit to the one on the previous page, except instead of covering the year 1942, it covers the operations for the first six months of 1943. It is laid out in exactly the same way with this difference: In determining what taxes are war taxes and what taxes are pre-war taxes, it is necessary to know what proportion was allocated for excess taxes and what was allocated for normal and surtaxes. Those figures were not available to me on the basis of 6 months' operation. All I had there was an accrual figure; the total figure for the first six months, hence that war tax allocation was not based so far as the information was available to me, hence, instead of three

income figures as I did previously, I have set up the income of $3,476,401.

The next deduction is the total income taxes of $2,319,978. That is the figure I could not break down into war and pre-war taxes.

That left net income after all taxes of $1,156,423.

I have computed figures corresponding to the first and last and previous sheet except instead of being for the year 1942, they are for the first six months of 1943, and these figures for taxes are
422 here based upon estimated accruals which I felt may or may not be the same as the actual accruals.

By Capt. DAVIS;

Q. Which I assume may or may not be the same as the actual amounts later paid, is that correct?

A. That is correct, those are the figures as accrued by the company and as reported by it to the District Commission.

Q. So that if there was a substantial difference this year as there was in 1942, between the amounts paid, and the amounts accrued, the rate of return after all taxes would be correspondingly increased; is that correct?

A. Yes, that is correct. I might point out this, as indicated in that third footnote, that if you computed the rate of return for 1942 instead of on the basis of the tax payments, if you computed that on the basis of tax accruals, you would get a rate of return for 1942 exactly the same as for the first six months of 1943, in other words, 7.4 percent.

Q. Now, will you turn to page 8 of Exhibit 84?

A. Yes.

Q. What does this table show?

A. This table shows comparative earnings for the Capital Transit Company, first six months of 1943, compared with the first six months of 1942, and I have broken down certain of the operating expenses as is indicated.

A few of the operating expenses were broken down and the rest just lumped as is there shown.

The reason is this: Certain operating expenses at an
423 intermediate period, like at the end of six months; as a matter of fact certain of those for the whole year are not actually out of pocket expenses or expenses that are paid in cash, but to a large extent are subject to managerial discretion, shall we say, of the company officials.

Among those are salaries and expenses of general officers, injuries and damages, and that has a special aspect to which I will refer and explain, and then the single item of depreciation, and the others are just lumped.

Q. Just on that point, you said something that these were not paid out in cash, salaries of the officers.

A. Salaries are paid to some extent, and those are subject largely to the discretion of the executive officers, and they go higher or lower within certain limits at the discretion of the company.

Now, injuries and damages reserve, on the first sheet there is a a little bit more detail on this, merely as a matter of fact in accounting more than anything else, the criticism of the company has been historically that it has accrued more per year for that purpose than it has actually paid out during the same period for injuries and damages.

I merely indicate that as a matter of fact from examination of the records.

In the first six months of 1942, it accrued $889,000; first six month of 1943 it accrued considerably more than
424 that. Without making any adjustment of these items as reported, and leaving them exactly as reported by the company, we find that net income before Federal income taxes was $3,311,120 in the fist six months of 1943 as against $2,208,209 some odd in 1942, an increase of almost exactly 50 percent.

Mr. QUIRK. May I interrupt a moment, off the record? I have no disposition to interfere with this inquiry except in the interest of saving time.

It would seem to me that if this witness is going to explain the purpose of this thing, what he is actually doing is reading all of the figures, that we can all read. I do not see that there is any purpose to go through and tell us what the exhibit shows, what the figures are.

Capt. DAVIS. We do not want to repeat any of those figures.

Mr. QUIRK. That is exactly what he is doing. I am not objecting to the explanation, but I do have the objection of reading of the figures in addition to the objections that have already been made.

Capt. DAVIS. In the course of explaining the exhibits, it is of course necessary to read certain figures.

Mr. QUIRK. In the course of explaining it, but it is not necessary to read the entire exhibit.

Capt. DAVIS. Will you try in your answer not to refer
425 more than necessary to figures?

We think it is necessary, Your Honor, to refer to them, or at least to clarify them so we will know what we are talking about.

The WITNESS. The net income after all taxes is the net income at the bottom, the right column, the first six months of the corresponding year.

I might add this, that, by way of explanation, that with large increase ostensibly the net income after all taxes is some ten thousand dollars, 1 percent for the six months—1 percent for the first six months of 1943 over 1942.

One of the reasons for that, or at least that could conceivably have been eliminated by adjustment in certain of these operating expenses which I have indicated which were subject to managerial discretion.

By Capt. DAVIS:

Q. And of those amounts, one of the largest items would result from that——

A. Well, the largest difference is in depreciation, difference in injuries and damages, and the difference in salaries account, thereby contributing to the increase.

Any increase of minor character could wipe out that difference in income after all the taxes.

Q. Well, will you turn to page 9, and state what you show on that page?

A. All that shows is merely for each of the four indicated
426 periods what the actual disbursements were for that purpose, injuries and damages, in each of those four periods in which the accruals or reserves exceed the actual expenditures for that purpose.

Q. Now, in estimating whether or not the utility company is earning a fair rate of return, do you feel that, generally speaking, it is more accurate to adjust figures so as to reflect as accurately as possible the actual expenses rather than book accruals?

A. Yes; where you start with this—I might mention that for this purpose I have made no changes, I have just broken down the accounts so that the parts could be picked out. I made no changes in the individual items at all.

Q. In other words, you made no changes in computing the rates of return here but you feel that it is appropriate for the Commission to consider these in that they might want to make adjustments, or they might want to consider that the company had an over conservative policy here in deciding whether or not there was a fair rate of return, or what it should be?

A. That is right, there are no changes in these expenses in computing income, I accepted every one of these for the purpose of that computation as reported operating expenses. Of course, if you made adjustment, this rate of return would be correspondingly increased.

Q. Now, will you turn to page 10, please?

A. Yes, sir.

427 Q. Now, generally speaking, what does page 10 show?

A. I am afraid that this will be one of these exhibits that you can not explain in general, but in general, it is this, the company earns a certain rate of return as I previously indicated on certain investment, as previously indicated.

In this exhibit now, if it is desired to find out how much of a rate reduction could have been made in Capital Transit Company gross 1942 and still leave it with a rate of return of 5 percent of the indicated net investment, these rate reductions indicated here would be necessary.

In other words, in 1942, they earned so much as a result of that, the rate of return was 8.3 percent.

Now, if their gross income, or rather, gross earnings were reduced by $2,400,000 some odd, they would still have earned in 1942 5 percent after all taxes.

Now, I can explain the details of how I got that figure, I can go through and give you that explanation.

Mr. HILL. That is even more than the total gross from the Pentagon line, isn't it?

The WITNESS. I don't know, possibly it is. You said it was 1 percent.

Mr. HILL. If you do reduce it by this amount, you have shown, they would have made nothing minus.

The WITNESS. I am not stating that this reduction should
428 be made on the Pentagon operation. This exhibit is on the over-all operations. That rate reduction on the over-all operations would bring the rate of return on over-all operations down to 5 percent after all taxes.

Mr. HILL. Are you suggesting that these figures be applied to the over-all?

The WITNESS. I am not suggesting. I have just indicated that if that reduction were thus made the rate of return would be a certain figure. If you want to look at it this way, if the Commission which had jurisdiction were to reduce earnings that amount, it still would get a rate of return, would not cut the rate of return below 5 percent.

I might point out this, that this reduction of $2,464,000 some odd is a reduction in gross and not at all reduction in net. The reason for that is too obvious, at least pretty obvious, for each dollar reduction in gross the company escapes a certain tax liability. A company in excess profits taxes such as the Capital Transit Company is, if its taxable income were cut by one dollar its income tax bill would be cut by 81 cents.

In other words, if you took a dollar away from the Capital Transit Company in gross, they save 81 cents in income taxes, the cost to it is 19 cents. It is because of that income tax situation

that a rate reduction in gross of $2,464,000 would reduce net by only $1,166,000.

429 Mr. LANE. If, on the other hand, you follow out that theory, you take off all of the net profits, how much would the tax be reduced?

The WITNESS. If you took away all taxable income?

Mr. LANE. Yes.

The WITNESS. It would be reduced by exactly the amount indicated by Mr. Heberle as his income-tax bill.

Mr. LANE. If you just took that out of gross, they would pay no tax at all?

The WITNESS. No; if you took all of their taxable income away, you would reduce the tax by the total amount.

Mr. LANE. You do not mean that by this 81 percent reduction in the first million would result from taking off that gross income or net income?

The WITNESS. No; all I say is that to the extent——

Mr. LANE. The first dollar is 81 cents.

The WITNESS. And the second dollar and the third dollar, and all the way down, down to 617,000 of those dollars, because the amount in which this company paid excess profits taxes was $617,000, so every one of those $617,000 would result in an 81-cent reduction in the income-tax bill to the company, and, mind you that is making no allowance for saving in local income taxes, and so forth.

Mr. LANE. It also reflects, though in the net income after taxes, doesn't it?

430 The WITNESS. Well, I have computed that and it indicates exactly what the effect is.

If you get income at the rate of return after all taxes were 5 percent, the rate of return before income taxes, that is the net operating income, as it is called by the I. C. C., would still be 8.3 percent.

By Capt. DAVIS:

Q. To summarize this, Mr. Kosh, without reading off the figures in the record, but so that the Commission can understand it intelligently, you took——

Mr. PRETTYMAN. Are you going to testify now, Captain? He is your witness.

Capt. DAVIS. No.

By Capt. DAVIS:

Q. Would you explain there how you arrived at this reduction and what the amount of the reduction is and how it is figured as to the taxes and as to the saving?

A. Right. The assumption is that, or at least we are trying to find out, the purpose of this exhibit is to determine how much of a reduction in gross is needed in order to leave the company for 1942 earnings 5 percent after all taxes. Five percent of its net investment represents $1,607,219. It actually earned after all taxes more than that, $2,700,000. In other words, the net in excess of 5 percent was a certain amount. In other words, the question now becomes what reduction in gross should be made in view of
431 the tax position of this company so that its net can be reduced by that $1,607,000 which is the excess over 5 percent, and that amount is $2,464,395.

Q. That is shown in this tabulation in the middle of the page?

A. That is right. I used only the first $761,000 and 81 percent as pointed out, and the computation shows a net of $1,166,000. And by way of interest, just to find out what that would mean in net operating income; that is, net income before income taxes; that would be 8.3 percent. In other words, if you cut gross by $2,464,000 you will have the company earning on 1942 earnings 5 percent after all taxes and 8.3 percent before income taxes.

Q. And the purpose of the lower part of the computation is to figure the return before income taxes?

A. That is correct.

Q. So summarizing this, the company could have a rate cut in terms of gross of $2,464,395 and still earn 5 percent after all taxes?

A. That is correct.

Q. And if you want to see what proportion their rate would have to be cut for that purpose, how would you figure that?

A. Well, their earnings——

Q. Suppose you are going to compute a reasonable rate
432 cut, how would you figure that?

A. As indicated on sheet 6, or page 6, rather, total operating revenue for the company in 1942 was $24,000,000. To bring the rate of return after all taxes to 5 percent, there is an indicated reduction of two million four, which is about 10 percent. In other words, to pull down, about 10 percent reduction gross would leave the company around 5 percent after all taxes, or 8.3 percent before income taxes.

Q. That assumes, of course, that the expenses would be the same?

A. That is right, that is on the basis of 1942 operations.

Q. Now, will you turn to page 11 and state what that shows?

A. Page 11 is exactly the same as page 10 of this exhibit with the exception that I have taken a reduction in gross and not to bring the rate of return after all taxes down to 5½ percent in-

stead of 5 percent, this indicates a reduction in gross that the company could absorb and still have a rate of return after all taxes of 5½ percent. That would mean a rate of return before income taxes of 9.2 percent, and I might note, if I didn't before, if I skipped it before, that this expression, Federal income taxes to the extent that there would be a reduction in gross would also relieve the company of certain local income taxes, that 5½ percent would probably be a little higher.

Q. Will you turn to page 12 and state what that shows?

433 A. The same as 10 and 11, but instead of the rate of return being 5 percent and 5½ percent, this computation is predicated upon the rate of return after all taxes of 6 percent, and it shows the rate of return before income taxes would be 10 percent.

Q. What does page 13 show?

A. This page is merely a summary of taxes as accrued by the Capital Transit Company for 1942. That is taken entirely from reports filed with the District Public Utilities Commission. That is just entitled as local income taxes, Federal taxes, and other than income taxes.

Q. That is put in here for convenient reference?

A. That is right. No adjustment of that.

Q. What does page 14 show?

A. Page 14 is merely a reconciliation between page 13, the amount as accrued, to show the effect of the difference between the amount accrued or reported to the District Commission, and the amount paid for Federal taxes as previously testified to by Mr. Heberle.

In other words, the difference between the accruals and the actual payments is in the neighborhood of $400,000.

Q. And what does page 15 show?

A. Page 15 is merely a detailed tabulation to indicate the tax accruals, all tax accruals for the first six months of 1943, no

434 adjustment, it is merely detail of the information filed with the District Commission.

Q. Have you any further comments?

A. Well——

Q. On Exhibit 84, which you think might be helpful at this time?

A. Just one thing. The question was asked: Did I recommend that certain indicated rate reductions were made? I made no such representations. The only purpose of the computation was that if certain rate reductions or revisions in gross here proposed for the Pentagon and other Virginia operations, if those reductions fall within the limits here indicated on Exhibit 12 are the re-

ductions suggested, and the result would be as shown, but my inference is that the rate of return would be at least 6 percent.

Mr. LANE. For the purposes of the record, you mean page 12, don't you, not Exhibit 12?

The WITNESS. You are correct, page 12.

Mr. PRETTYMAN. Colonel Barron says that he is leaving the exhibit relating to the Capital Transit Company. It has been my understanding that all this testimony by Mr. Kosh has been a proffer of testimony and that the entire testimony is covered by the ruling.

As it stands, I think that all of the offered testimony is immaterial, and we understand that it is not received, but it represents a proffer.

435 Now, I should like to reserve my right to cross-examination of Mr. Kosh and reserve it with the understanding if the Commission should eventually rule that this proffer is material, that this testimony thus proffered should be received, I want to cross-examine.

Now, the reason I do not cross-examine now is because that cross-examination, even on the items that have occurred to me as I listened to him, would be very extensive. I would also want to study the testimony and reserve further right to further cross-examine.

He has taken that May 1938 order of the Commission, or statement of the Public Utilities Commission, and we should want to cross-examine very extensively on the item, because the fact is that the Public Utilities Commission made a finding as to our cost in 1938, and there has been a considerable amount of discussion going on with respect to that item, so that the very first item on the first page would be the subject of very extensive investigation as to what is historical cost of the property of this company. We have been trying to find it out now for over 20 years.

I may say also that he took reserve for depreciation from historical cost, and I want to examine very extensively on that.

So you see, on historical costs, and all the things that he has been talking about, and a great many other figures,

436 as I turn the pages here at this time, I should want to examine very extensively on in cross-examination.

I would like, Your Honor, permission to reserve the right so that I can assert it if, as, and when in the event the Commission should determine that this over-all testimony is material.

Col. BARRON. I would think, Mr. Commissioner——

Commr. PATTERSON. I think that cross-examination can be reserved.

Col. BARRON. Of course, we are not going to ask any time ourselves, and we think what is sauce for the goose should be sauce for the gander. We want to complete this thing.

Mr. PRETTYMAN. I am not asking for a continuance now, I am simply reserving my cross-examination, my right to cross-examine this witness in the event that the Commission should determine contrary to the pending ruling, that this over-all data is material.

Commr. PATTERSON. We will have to come back to cross-examine.

Mr. HILL. If the ruling made by the Commissioner would be rejected——

Commr. PATTERSON. I think we can reserve cross-examination.

Col. BARRON. There is one point that counsel just stated,
437 that this historical cost which is a figure the public Utilities Commission arrived at in 1938 has been refuted.

Mr. PRETTYMAN. I did not say that. I said that in 1938 they found another figure which is somewhat like $5,000,000 less. Now this spring that order was opened, a completely new inquiry into the reproduction cost, used value, rate of return, was ordered, and bringing in the historical cost of the Capital Transit Company, and that inquiry is under way and, as everybody knows, it takes months to prepare such a valuation.

Col. BARRON. I do not want to go into all that again, but let me ask you one question: This exhibit is prepared on the 1938 figure, you do not contend that they have been refuted in any way, do you?

Mr. PRETTYMAN. No; but we contend they are erroneous. The 1938 order was nonappealable, simply a valuation order, and in the District, we could not appeal it. It has never been used in a rate case, and therefore it has never been under attack.

We do not agree with it, it is absolutely erroneous, and if I had to cross-examine this witness, I will assure Your Honor it will take several days on that one topic.

Col. BARRON. I would like for the witness to yield a moment. I see there is a member of the Utilities Commission present. I would like to have Mr. Hankins sworn, just for a
438 moment, if he is willing to testify. I would just like to ask him two or three questions.

Mr. HANKINS. I do not know what you want to have me testify to.

Col. BARRON. I want to ask about that 1938 figure.

Commr. PATTERSON. Figure as to what?

Col. BARRON. 1938 valuation.

Commr. PATTERSON. You wish to have him sworn?

Col. BARRON. Yes, sir. I want to ask him the question as a foundation as to whether or not this is the latest figure on historical cost.

Commr. PATTERSON. I have no objection to that if he speaks for the Commission.

Mr. HANKINS. I can say this that in my——

Commr. PATTERSON. Are you going to testify or are you going to make a speech?

Mr. HANKINS. I do not think it is necessary to——

Exam. MATTINGLY. This is off the record, Mr. Reporter.

(Discussion off the record.)

The WITNESS. One of you counsel said the Commission confused the figures shown on page 1 of Exhibit 84 which is the figure arrived at by the Public Utilities Commission in such and such a decision.

Mr. HILL. That is already in, Mr. Examiner.

Exam. MATTINGLY. I think it is, too, but to make it
439 certain——

Mr. PRETTYMAN. I have a copy of the order in my hand, Order No. 1713, August 29, 1938, which shows that they found that the historical cost "as nearly as practicable as such cost may be ascertained from the record, to be $29,037,594" relating to——

Exam. MATTINGLY. Yes. Then the exhibit is wrong.

Mr. PRETTYMAN. Let me add one more thing. This is the finding of "Historical Cost of the Property of the Capital Transit Company Used and Useful for the Convenience of the Public in the District of Columbia on that Date," but this witness, I might say, has related the total revenues of the company to the historical cost of the property used and useful in the District of Columbia, which is one point upon which we will cross-examine, and there are a great many other features.

Col. BARRON. I would like Mr. Kosh to explain just how he arrived at that figure.

The WITNESS. I haven't my copy here. May I borrow it?

On page 17, as indicated on the first sheet—I mean on page 17 of this order, as I have indicated on sheet 1, I took the figure from this order, and I want to read the part of the order which I took it from:

"Conclusion. After careful consideration of the record, the
440 Commission concluded and finds the historical cost of the property of the Capital Transit Company used and useful for the convenience of the public in the District of Columbia as nearly as practicable as said cost may be ascertained from the record, to be $29,037,594, as of December 31, 1935."

There is a probable reversal of the last two figures. My exhibit was copied "49." The effect of that on any of the rest of the return would absolutely be negligible, it is $50 in $29,000,000. That is just an error in copying and as indicated in the footnote of that exhibit 84, sheet 1, I have indicated the very page from which I took that number.

Mr. PRETTYMAN. You read exactly what I read, didn't you?

The WITNESS. Yes.

Mr. PRETTYMAN. I mean to examine him on page 68 which shows that even on the book cost of the property as is shown in the record, it is $53,160,000.

The WITNESS. That is correct, the book cost that is.

By Capt. DAVIS:

Q. Have you any comments, Mr. Kosh, on Mr. Prettyman's reference to the cost that was only in respect to the property in the District, and that some of your figures include some other operations?

A. No; not right now. I would like to look at that again. He said Capital Transit Company for the convenience of the passengers in the District of Columbia. I presume that covers their total operations.

Q. Of course, there have been considerable changes since 441 1935 in the suburban operations, have there not?

A. Well, these net additions in their assets here since December 31, 1935, would indicate total additions since that time have been considerable, that was taken from their annual report to stockholders in '42, and indicate total addition on the same basis, being a consolidated report to the stockholders, of income, so that the addition made by the consolidated companies since the end of 1935 was reflected in the first sheet of Exhibit 84.

Q. That would include the operations at this time, the present operations, of course?

A. I presume so, since that consolidated report, of course, would cover that, too.

Col. BARRON. We will leave this exhibit now, and leave the Capital Transit Company, and proceed to one of the other companies.

Commr. PATTERSON. All right. You may be excused.

Capt. DAVIS. Well, I want to offer an exhibit through him.

Col. BARRON. No; it is understood that the right of cross examination is reserved.

Commr. PATTERSON. That is right.

Col. BARRON. I offer for identification an exhibit consisting of nine pages, captioned: "Alexandria, Barcroft and Washington Transit Company—Net Investment, 1942," and I will ask that the pages be numbered. They are not numbered now.

442 (War and Navy Exhibit 85, Witness Kosh, marked for identification.)

The WITNESS. May I suggest that we read the title pages?

Exam. MATTINGLY. All right. Page 1 shows the net investment, 1942; page 2 is earnings, 1942; page 3 war tax adjustment for 1942; page 4 comparative earnings statement; page 5, 5-percent return; page 6, 5½-percent return; page 7, 6-percent return; page 8, excessive salary correction; page 9, salaries paid by companies of comparable size. That is the last one, nine pages.

The WITNESS. Thank you.

By Col. BARRON:

Q. Just one question.

Do you recognize that exhibit that has just been offered for identification?

A. Yes, sir.

Q. Did you prepare it?

A. I did.

Col. BARRON. That is all.

Mr. QUIRK. Mr. Commissioner, as counsel for the Alexandria, Barcroft and Washington Transit Company, I make the objection that this is incompetent, irrelevant, and immaterial, all the pages of this exhibit, if, as I understand it, this witness is here merely for the purpose of explaining what these exhibits mean, if they need explanation and to aid the Commission in its final ruling on this question, then I will, of course, make the same reser-

443 vation as to cross-examination that Mr. Prettyman made in behalf of the Capital Transit Company, otherwise, so far as I am concerned, we are willing to assume, with the right to check, that these gentlemen have used the right figures from our books, and I do not see any point in going over them item by item.

I think that is agreeable to Colonel Barron.

But I do think that the witness here went rather far on that page 8, where he just put down extensive corrections.

I don't know how he could possibly know what is excessive salary and what is not.

Capt. DAVIS. He will explain that.

Col. BARRON. Perhaps you want some explanation of that particular page?

Mr. QUIRK. Well, I object to it in any event.

I think it is going beyond what you might call "good cricket."

Commr. PATTERSON. This will be accepted, subject to objection, and you may cross-examine.

You may proceed.

Col. BARRON. I think, in order to save time without explaining all of these details fully and as exactly as he did in the case of the Capital Transit Company, we might just revert to page 8 and let the witness explain that page, because the explanation is, from the other exhibit, just as for these others.

444 Mr. QUIRK. I do not see any necessity to explain any of it. The Commission is presumed to be an expert body, and he has already followed the same method that he followed in the case of the Capital Transit.

Exam. MATTINGLY. Well, if he wants to add his explanation of the one word "excessive" on page 8, he might go ahead.

The WITNESS. On page 4, there is a detail left out, if I may make that correction. Page 4 is "Comparative Earnings Statement." It should show 6 months, 1943, and 1942, it is not for the full year, of course. It should be 6 months. That is all on that.

And one more thing, the account numbers that are scattered through these exhibits are those referring to the system of accounts for the I. C. C., those figures are taken from the I. C. C. report.

By Col. BARRON:

Q. What do you mean by the term "excessive salary" as you have used it?

A. It might be a little more definite to look at page 9 first, since page 9 is really basic to page 8, so if we look at page 9, on that page I have listed the companies whose gross revenue for the first six months of 1943 was within $500,000, up or down, of those reported by the Alexandria, Barcroft and Washington Transit Company for six months' operation of 1943.

I had someone check through the companies reporting to
445 the I. C. C. and we took all those whose gross for six months of 1943 was within half a million dollars of that reported by the Alexandria, Barcroft and Washington.

That list is indicated on page 9.

Ahead of that is information of the gross earned by the Alexandria, Barcroft and Washington for that same period.

The second column gives the amount reported as salary paid general officers of all the companies listed on the sheet.

I took those 1942 salaries for the listed companies after taxes, excessive of the Alexandria, Barcroft and Washington Company, then found that the average salary paid by those corporations was $28,700.

Col. DAVIS. That is the average total salaries paid officers?

The WITNESS. Average salaries to general officers. Average salaries to general officers might be any officer. That is the way it is called in the report, and that is the average for those companies, $28,700.

By Capt. DAVIS:

Q. Where you use that word "salary" you did not mean single salary but the total?

A. That possibly should read "average general officers." And in the part below that, I have just indicated what the position of the A. B. and W. was with reference to the salaries paid by these other companies, and I found after this, as indicated that the A. B. and W. paid $8,000 less than the amount paid the
446 highest company of the group; that it paid $21,000 above the second highest salary, and that it paid $26,000 more than the average for the whole group.

Now, if you will turn to page 8——

Mr. QUIRK. Before you leave page 9, just what did you mean by this item of $14,000 opposite the Richmond Greyhound Line, what does that embrace?

The WITNESS. That is the amount they reported in 1942 under the title "Salaries Paid General Officers" in the report filed with this Commission.

Mr. WHITTLESEY. You do not know whether it means one man or ten?

The WITNESS. No. All I know is that it is the heading as recorded on the form and there is no adjustment in any of these companies, they are taken directly from the report to this Commission by these companies.

Now, on page 8. Just previously I had been asked whether there was a difference between gross rate reduction and net rate reduction. Now, this thing also works in the reverse: to the extent that certain operating expenses are increased or decreased, there are also corresponding extra charges on income tax. Now, all I have done is label that $26,000, the amount above which Alexandria, Barcroft and Washington salaries to general officers is in excess of the average of the group. I labeled that the excess
447 salaries, and the rest of that page is, I think, self-explanatory.

I might also point out that the earnings, rate of return and income in the first sheets of this exhibit do not reflect any salary corrections; the rates of return on page 2 and the other pages are assuming that the salaries as paid are operating expenses, that salary correction was not made in the rates of return.

Mr. LANE. Do I understand that these are all of the companies operating and filing reports with the I. C. C. within a range of that $500,000 of the A. B. and W.?

The WITNESS. I had a man go down and look at those reports, and my instructions were to pick out every company reporting a gross figure within $500,000.

Mr. LANE. Plus or minus?

The WITNESS. Pardon?
Mr. LANE. Plus or minus?
The WITNESS. Plus or minus; yes.
Mr. LANE. That is a million dollar spread.
The WITNESS. $500,000 above and below.
Mr. QUIRK. You did not do that yourself?
The WITNESS. I did not; I had it done.
Mr. QUIRK. You do not know, then, what the companies were?
The WITNESS. It was done under my supervision.
Mr. HILL. Did you ask them to get all motor carriers or all motor common carriers of passengers?
448 The WITNESS. I don't remember.
Mr. HILL. Are there any property carriers on there that you recognize?
The WITNESS. I do not know. Do I recognize any of these?
Mr. HILL. Yes.
The WITNESS. Some of these, maybe most of them look to be carriers.
Mr. HILL. What makes them look to be carriers, the word "Greyhound"?
The WITNESS. Well, most of the Greyhound busses are passenger carriers. They probably carry also other than passengers.
I said I do not know whether these are all passenger carriers or if there are freight carriers included.
Capt. DAVIS. We have no objection to——
Mr. PRETTYMAN. Do I understand that your testimony is that your first one, Carolina Coach Company, that the total salaries paid to general officers in 1942 were $17,000?
The WITNESS. That is the report for 1942; yes.
Mr. PRETTYMAN. Richmond Greyhound total $14,000?
The WITNESS. Salaries to general officers.
Commr. PATTERSON. Well, this Richmond Greyhound Line, for instance, isn't that affiliated with the Greyhound Lines generally, and this might simply be one or two local officers down there
449 and does not take in the amount of salaries of the general officers of the parent company?
The WITNESS. If the report that they have to file with this Commission, annual report, allows them that kind of income, that kind of an item, then it may very well be.
Commr. PATTERSON. I do not know; I am just asking you.
The WITNESS. I do not know, sir; I am just taking it under the title in here from their annual report. Now, if in the annual report they may report it this way, then that may be the case.
Commr. PATTERSON. Looks like here, for instance, the Penn-Ohio Coach Lines, the gross of $1,417,000 was only $13,000 allo-

cated to general officers. It would seem as though that might be pretty low, unless there may be some other operating organization affiliated with them.

The WITNESS. Well, I had assumed this, that under the regulations they filed this annual report to the extent that they are standardized and that all companies file on the same understanding, these would then be comparable. I have made no individual study of these companies, and as I indicated before, this correction does not carry into the earnings as shown, this is made in addition to that.

Mr. QUIRK. These two pages, 8 and 9 of this exhibit, illustrate about as well as anything could——

Commr. PATTERSON. Well, you are not going to cross-examine now, are you?

450 Mr. QUIRK. No; but if they are admitting this kind of evidence now we will probably have to get subpoenas out and by request bring some officers in here from some of these other companies to explain this.

I recognize a chefit here of seven years' standing; there is something very strange about this.

It just goes to prolong this hearing and there is nothing to show that it is in any way relevant to this issue.

The WITNESS. It is for that reason that I did not include it in the rate of return.

Col. BARRON. We should certainly have no objection to their subpoenaing witnesses or explaining any of these items themselves. This is just taken from the reports of the company, as the witness testified.

Exam. MATTINGLY. Any further discussion of this exhibit?

Col. BARRON. I am through talking about it. I have got another one here I would like to offer.

Exam. MATTINGLY. Before we get any farther, I want to ask the reporter, have you got your notes of this morning with you? I have a memorandum here of an exhibit——

Mr. QUIRK. It is understood that I am reserving the right to cross-examine if the Commission should overrule the Commissioner and rule this sort of testimony in.

Commr. PATTERSON. Yes; the record will so show.

Col. BARRON. I offer for identification whatever the

451 next number may be.

Commr. PATTERSON. 86, I think.

(War and Navy Exhibit 86, Witness Kosh, marked for identification.)

Col. BARRON. Captioned "Washington, Virginia, and Maryland Coach Company." It consists of 9 pages which I ask to be numbered,

The first one is Net Investment, page 1, dated December 31, 1942.

The second page will be earnings, 1942.

Exam. MATTINGLY. Second is earnings for 1942?

Col. BARRON. Yes, sir.

Exam. MATTINGLY. All right, go ahead.

Col. BARRON. The third one, war tax adjustment, 1942, and the fourth one is comparative earnings statement for the first six months of, what is that, Mr. Kosh, 1943?

The WITNESS. Both '42 and '43.

Col. BARRON. All right.

The next one, No. 6, rate reduction to bring rate of return to 5 percent after all taxes, the year 1942.

The next one, page 8, captioned: "Rate Reduction to Bring Rate of Return to 5½ Percent After All Taxes."

Exam. MATTINGLY. You say paid 8?

Col. BARRON. 7.

Exam. MATTINGLY. Wait a minute. What number is the
452 5 percent return?

Col. BARRON. That is 6. That is right. 5 percent would be page 5.

Page 7 would be rate reductions to bring rate of return to 6 percent after taxes.

Page 8, captioned "Excessive Salary Corrections."

Page 9, "Salaries Paid by Compaines of Comparable Size."

Exam. MATTINGLY. At this time, I think we will take a recess for ten minutes.

(A short recess was taken.)

Mr. WHITTLESEY. Mr. Commissioner, for the purpose of expediting this proceeding, it is understood that the witness will testify regarding the Washington, Virginia, and Maryland Coach Company, in principle, the same as he testified regarding the Capital Transit Company.

Therefore, it does not appear to be necessary to have him make a proffer of the details of evidence that he would produce.

Of course, the company objects strenuously to pages 8 and 9, and to any inference that the salaries of the officers of this company are excessive.

In addition to the reasons stated by Mr. Quirk, we challenge the qualifications of this witness to testify as to whether the salaries are excessive or not.

Col. BARRON. I believe you identified this, didn't you, before?
453 The WITNESS. Is that for the W., V. and M.?

By Col. BARRON:

A. Yes; that was Exhibit 86. Yes; that is right.

Exam. MATTINGLY. Just before you get too far away from your Exhibit 84 of the Capital Transit Company, that historical cost was taken from the report of the Utilities Commission?

The WITNESS. An order of the Public Utilities Commission.

Exam. MATTINGLY. How about the original cost as shown in Exhibit 86; what is that; what is the source of those figures?

The WITNESS. This was taken from I. C. C. reports under property account 1200, indicating original cost and depreciation reserve.

Exam. MATTINGLY. I see.

Capt. DAVIS. In other words, with the exception of Capital Transit Company, these are book figures as reported to this Commission?

The WITNESS. Yes; the third figure in each of the three Virginia companies labeled "Net Property" is the figure shown for account 1200 in the report to this Commission.

Exam. MATTINGLY. And the original cost which you show in line 1, is that the same?

The WITNESS. That is in the account, that is 1200 less the reserve. The first three figures that go to make up account 1200.

Exam. MATTINGLY. That is in account 1200?

454 The WITNESS. Yes, sir.

Col. BARRON. We offer it along with the others.

Mr. HILL. May I ask the witness one question before we get too far away from Exhibit 84?

On page 5——

The WITNESS. 84?

Mr. HILL. Yes; Exhibit 84.

The WITNESS. Yes.

Mr. HILL. Page 5.

The WITNESS. Yes.

Mr. HILL. Will you explain the "21/40" that you have near the bottom?

The WITNESS. 40 percent is the incc tax rate for 1942.

Mr. HILL. Yes.

The WITNESS. The 1939 rate is 19, and so that 19 and 40 should be at the 19-percent rate, so the difference would be 21 to 40, the excess over the previous rate.

By Col. BARRON:

Q. Now, I notice on this Exhibit 86, page 9, that there are different companies used there on page 9.

A. Yes, sir.

Q. How were they selected?

A. Do you mean page 8, Colonel, the list of the companies?

Q. Yes.

A. Those companies are all those whose gross revenues for the first six months of 1943 were within $150,000 of those earned by this company in the same period.

455

Q. And why did you take $150,000?

A. Had I taken $150,000 on the other one I would have gotten just a couple of companies, maybe one or two, it was just a question of getting at least eight or ten companies so that there would be some sort of representative or sample income.

Mr. LANE. Does this purport to be all of the companies?

The WITNESS. Within those limits.

Mr. LANE. All of the companies within those limits that reported to the I. C. C.?

The WITNESS. That is right.

Mr. HILL. Whether they are property carriers or common carriers?

The WITNESS. Yes, I said that I would check up on that. I am not through.

Capt. DAVIS. Will you make that check so that we can find out?

The WITNESS. Yes.

Col. BARRON. The next one is captioned: "Arlington and Fairfax Motor Transportation Company," comprises eight pages.

Page 1, net investment, December 31, 1942; page 2, earnings 1942; page 3, war tax adjustment 1942; page 4, comparative earnings statement; page 5, comparative earnings statement after income taxes; page 6, rate reduction to bring rate of return to 5 percent after all taxes 1942; page 7, rate reduction to bring rate of return to 5½ percent after all taxes 1942; page 8, rate reduction to bring rate of return to 6 percent after all taxes.

456

(War and Navy Exhibit 87, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. Did you prepare this exhibit?

A. Yes; I did.

Mr. HILL. Mr. Commissioner, may it be understood that this may be handled in the same manner.

The WITNESS. There is one difference.

Mr. HILL. That the corresponding exhibits that the other companies were handled.

Commr. PATTERSON. Same ruling.

Capt. DAVIS. He says that there is one difference.

Commr. PATTERSON. Perhaps you haven't got one page 9 for him?

The WITNESS. I can explain that one.

Mr. HILL. I am the most bitterly disappointed person about that.

The WITNESS. Would you like an explanation?

Mr. QUIRK. We can establish one thing, Mr. Commissioner, that you have to deal with a small company to get a good salary.

By Col. BARRON:

Q. Will you explain why you did not show the same data?

457 A. Yes.

Q. Why?

A. The reason was that the average of the similar group was within $100 of the salaries paid by this company.

Q. Well, we just want to be fair. Now, what was the difference that you referred to?

A. On page 4, there is comparative earnings, six months 1942 and '43. Unlike the other exhibits there is no income; no net income after income taxes.

Q. Why?

A. The Arlington and Fairfax Company for the six months of 1943, the explanation of that is that the company did not indicate the amount of income taxes accrual, hence I could not make the comparison, but if that comparison were desired, on page 5 we estimate what their accruals would be, assuming their method of accrual was the same for 1943 as for 1942.

The details of this manner of calculation are indicated on page 5. That is the only difference.

Q. You showed certain effect on reductions of earnings for 1942. Now, why wasn't that shown for 1943, Mr. Kosh?

A. For 1943 figures, they were just accumulated figures for six months. In every case the earnings for six months of 1943 were at least as good as those for the same period in 1942.

Q. In each of the four companies?

458 A. Yes; where there was a slight difference of $10,000 in the case of the Capital Transit Company, I believe, I commented on that, hence it is hard to presume that the earnings for 1943 will be at least as good as for 1942 on the basis of six months' figures, hence any revision that the company could stand in 1942 subject to the different rates of return would at least be available to the company for the year 1943.

Col. BARRON. I do not believe we have anything else to offer by this witness except maybe just to supplement some of the information that they have inquired about.

Commr. PATTERSON. All right. Do you have anything further?

Col. BARRON. We have another witness.

Commr. PATTERSON. You may as well call your next witness.

Col. BARRON. Yes, sir.

459 Col. BARRON. Mr. Taylor, please

MERRITT H. TAYLOR was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Your name, address and position, Mr. Taylor?

A. Merritt H. Taylor; 156 Golfview Road, Ardmore, Pennsylvania. My present position is as consultant to the Highway Division, Transportation Corps of the Army, and also president of the Philadelphia Suburban Transportation Company, Upper Darby, Pennsylvania.

Q. Will you just tell briefly what type of company it is that you are president of.

A. President of a bus company.

Q. And how long have you been engaged in this type of business?

A. I was employed by the predecessor company, Philadelphia and West Chester Traction Company from 1916 to 1921. I have been continuously employed since I was elected president of these companies on March 2, 1932. We operate a suburban system, both bus and rail, largely radiating from 69th Street Terminal, Upper Darby.

Q. 69th Street Terminal, is that Philadelphia?

A. Just over the City line, Upper Darby, Pennsylvania, Delaware County.

460 Q. Do you run into Philadelphia?

A. We do at some spots. We run into the City a short distance at spots similar to the distances that Capital Transit Company runs out of the District.

Q. About how large an operation is it, how many miles is this line?

A. I cannot tell you on the bus system. On the rail system we have about twenty miles of track. The bus lines overlap, different routes, different lines run on the same road, it would be hard to measure from that angle. We run 94 buses and grossed this year approximately three and a half million dollars.

Q. What was the gross revenue of your company for the year 1942?

A. Rail system $1,200,000; bus system $1,400,000, 1942. I have traveled pretty generally over the United States in the last year and a half for the War Department examining service at various Army installations, such points as Seattle, San Francisco, Los Angeles, New Orleans, and various other points.

Q. You are generally familiar with the operations of a considerable number of metropolitan bus lines, I take it?

A. Yes, sir.

Q. And have made special studies of *of* them in the larger cities and their suburban connections?

461 A. Yes; particularly as applied to services to Army installations.

Q. Yes, sir. Have you made any studies on which you can compute the revenue derived by the Capital Transit Company per bus mile on their trans-Potomac operations, that is route R-2 and Q-2?

A. Well, taking the Capital Transit Company's report of July 31, 1943, and applying their rate of fare to the number of passengers carried and taking the bus trips, the miles of those trips that they made, we arrive at a revenue per passenger mile of 46.3 cents.

Q. What is the average distance, if you know, traveled by workers, in the Pentagon Building and Gravelly Point, and Building T-7 between their homes and their place of work?

A. 6.2 miles as shown on Army and Navy Exhibit No. 13.

Q. What would you consider a reasonable revenue, based upon your experience for this type of operation per passenger mile for service between the homes of these employees and their place of work?

A. In the neighborhood of a cent and a half a mile.

Q. Passenger mile?

A. Per passenger mile.

I might say at that point that we have a similar type of operation between the Sun Shipyard, Chester, Pennsylvania, and our terminal at 69th Street, Upper Darby, which is a twelve

462 mile express run, shift changes, and the rate of fare for that trip is 15 cents, which is somewhat under the cent and a half a mile, but we do have some counter flow traffic there.

Q. How does your system compare in its cost per passenger mile with the Capital Transit Company?

A. Our cost is materially lower than the Capital Transit Company per bus mile but it should be about the same as the Virginia Companies.

Q. Which is about the same as the Virginia Companies?

A. This suburban, it is suburban rather city operation.

Q. At the figure you have just given per passenger mile, based on the surveys and investigations you have conducted, what is the average fare paid to the Capital Transit Company by Pentagon Employees or people occupying that building?

Mr. Hill. Before you answer that, may I have that repeated?

Commr. PATTERSON. Let the reporter read it.

(Question read.)

Mr. PRETTYMAN. I will object to that.

Exam. MATTINGLY. Well, don't you think you ought to first state what those surveys and investigations are?

Mr. HILL. That is what I want to know.

The WITNESS. The answer is, sir, that I have made no surveys. There have been surveys made, as shown in Army and Navy Exhibit 19, and the average fare is shown on that
463 Exhibit is 7.8 but I have not personally made any survey.

Mr. HILL. Well now, Mr. Commissioner, I would like to object right here. The witness referred just a moment ago to something based on Exhibit 13 which is itself based on a questionnaire which we have had no opportunity to examine, at least we have had no opportunity to examine the returns themselves. Now, he is going further and basing it on Exhibit 19, likewise based on the questionnaire, so that we have the whole thing starting with sand and more sand piled on. We have no chance to check anything or to cross examine.

Col. BARRON. They can, of course, interrogate or cross examine on those points, Mr. Commissioner.

Mr. HILL. If this witness is going to make any further statements of that sort, Mr. Commissioner, I would like to ask now that all the returns to questionnaires on which any or all of these exhibits or any of these surveys are based be presented in order that we may examine them. If the witness is testifying from that information.

Commr. PATTERSON. If the witness testifies from information that he has taken from the Exhibits and later on the Exhibits turn out to be wrong, of course his testimony will be equally wrong.

Mr. LANE. Well, do I take it that the cross examination of this witness will be postponed until such time as we have had an
464 opportunity of cross examining the witness who prepared the Exhibits on which he now relies.

Commr. PATTERSON. It can be.

Mr. LANE. I think it has to be that way if we are going to——

By Capt. DAVIS:

Q. Now, what rate of fare would result from the application of a reasonable amount, a cent and a quarter a mile, to the average distances shown for these passengers?

Mr. LANE. Say that again.

Mr. HILL. I get lost on these questions.

By Capt. DAVIS:

Q. In other words, using the figures which you have testified to and also using the figures shown in the previous Exhibit, what fare would you get as a result for the average passenger?

A. At a cent and a quarter a mile and the average haul of 6.21 miles, you would arrive at a fare of 7.7 cents.

Mr. QUIRK. Now, are you changing that from a cent and a half to a cent and a quarter? You testified a while ago that a cent and a half would be fair, now are you changing that?

A. I said that somewhere in that neighborhood would be a reasonable charge in my judgment.

Mr. QUIRK. But you have gotten down the street now.

The WITNESS. I was asked what a cent and a quarter would produce, and a cent and a quarter would produce 7.6 cents.

Mr. QUIRK. Well, 8 cents would produce something else.

465 The WITNESS. Yes, sir; and that is quite a matter of judgment whether a cent and a quarter is a proper rate or a cent and a half is a proper rate; those things are very difficult to evaluate with any great degree of accuracy.

By Capt. DAVIS:

Q. A cent and a quarter, I gather from what you say, would be pretty liberal and would include a pretty large amount of profit.

Mr. QUIRK. Let's let the witness, Captain, do the testifying.

Capt. DAVIS. He said that in his opinion a cent and a half would be a fair rate of return per passenger-mile.

The WITNESS. I said in that neighborhood; I did not say that a cent and a half would be the proper amount.

By Capt. DAVIS:

Q. Do you want to elaborate from your previous answer?

A. Well, there are many operations which are operating on a profit at a cent and a quarter. There are other operations that are operating at a cent and a half. Down outside of New Orleans, the New Orleans Staging area, there is an operation down there that is quite successful; the Louisiana Rapid Transit Company runs a special service at approximately a cent and a quarter.

Mr. QUIRK. Mr. Commissioner, I know that your rules are very liberal, but this witness is simply conclusions here, a most extraordinary thing to have a witness simply say

466 that an operation at New Orleans, that we cannot examine at all, he says that it is a successful operation and it is at a cent and a quarter a mile. That is a conclusion that would be subject to as large an investigation as this case is subject to if we are going into that seriously.

Col. BARRON. The witness is an expert in this field. Have you examined the operations down there?

A. Yes, sir.

Q. You have examined that operation?

A. Yes, sir.

Q. Is it comparable to any of the four companies here?

Mr. HILL. That certainly asks for a conclusion. Let's have the information about that company.

467 Q. It is comparable to any of the four companies here?

Mr. HILL. That certainly asks for a conclusion. Let's have the information about that company.

Commr. PATTERSON. They want to know whether they run a special operation.

Capt. DAVIS. He is just asked for an expert opinion.

Mr. PRETTYMAN. Where does your company run from, or rather, that company, I mean?

The WITNESS. Runs from the terminus, or rather, the nearest point on the south line trolley route of the New Orleans Public Service Company, past the approach to the Huey Long Bridge and into the staging area of the port of embarkation at New Orleans.

Capt. DAVIS. How many miles?

Mr. PRETTYMAN. It is a separate operation, I take it?

The WITNESS. It is an operation which starts at the city end of the city operation and then continues on supplying, serving the employees of the staging area.

Mr. PRETTYMAN. Is that the line on which Major Ristroph was formerly employed?

The WITNESS. No, sir.

Mr. QUIRK. What did you say the name of the New Orleans Company is?

The WITNESS. Louisiana Rapid Transit.

Mr. QUIRK. Is it a bus line?

468 The WITNESS. Yes, sir.

Mr. QUIRK. It is a common carrier?

The WITNESS. Yes, sir.

Mr. QUIRK. Does it file tariffs with this Commission?

The WITNESS. No, sir; it is an intrastate operation.

Mr. QUIRK. Did you bring reports that were filed currently with the Louisiana Commission?

The WITNESS. I don't know, I suppose so.

Mr. QUIRK. You did not bring the reports along with you, did you?

The WITNESS. No, I did not.

Mr. HILL. Where did you get your figures that they operated at a profit at a cent and a quarter a mile?

The WITNESS. The reason I happened to know about it was that the staging area had a problem with their civilian employees, getting them to work, and they were running trucks from the bus line railroad up to the staging area, hauling their employees, and I was requested to go down and make a survey of the situation, see what could be done about it.

The commanding general was recommending the use of a small locomotive and three passenger coaches to get the people out there.

I talked with the president of the Louisiana Rapid Transit Company and also the officials of the New Orleans Public Service Company, and it was agreed to establish a rate of fare of
469 approximately 5 cents and the use of a weekly ticket for a haul of about 4½ miles.

I was telephoned by the president of the Louisiana Rapid Transit Company about a year later, maybe nine months later, who asked my assistance in getting him some additional equipment, and I asked him whether he was operating at a profit and he told me that he was.

Mr. HILL. Is this the source of your opinion, what he told you?

The WITNESS. This is the source of my information as to whether he was operating at a profit or not, was the president of that company.

Mr. HILL. That was your investigation of that phase of the case?

The WITNESS. My investigation covered the installation of the service and I did not go down and examine the books and records of the company; no.

Mr. HILL. But your testimony that a company in New Orleans is operating profitably at a cent-and-a-quarter is based on a statement made to you by the president of that company?

The WITNESS. Yes, sir.

Mr. HILL. Now the——

Mr. PRETTYMAN. Which I suppose was made to you in the course of requesting assistance in getting some more equipment?

The WITNESS. It was not in connection with financing
470 of any equipment, it was because of the fact that his load characteristics were such that he needed assistance in getting additional equipment.

Incidentally, I asked him how he was making out. At the time he were down there we went over the thing and found out the proper course, and it was my judgment that he would operate it at a profit.

Mr. HILL. But you, while you were questioning him, he said that he was operating at a profit at a cent and a quarter?

Mr. WHITTLESEY. While we are on this present digression, may I ask you this question: Is that Rapid Transit Company affiliated with the city line?

The WITNESS. No, sir.

Mr. WHITTLESEY. Is there any transfer arrangement between the two lines?

The WITNESS. Not at the time I was there.

Mr. WHITTLESEY. So that if a man lives in the town and rides out to the edge of the town on one line, he pays a fare, then he gets on this other bus company, the Louisiana Rapid Transit Company and rides four-and-a-half miles for the nickel; is that right?

The WITNESS. That is correct.

Mr. WHITTLESEY. Now, do you know whether or not that company was subsidized, either directly or indirectly, by the War Department or the Government in regard to equipment or material or anything of that kind?

471 The WITNESS. No; they bought their busses and paid for them.

Mr. WHITTLESEY. And what was this appeal to you, then, to obtain additional equipment, and why was it necessary in view of these so-called load characteristics that you talked about?

The WITNESS. Because, in order to get chassis released from the frozen pool, release has to be obtained from a governmental agency. This chassis was released from the pool and then a bolted type of body installed on them, and the request for assistance from the Army was to obtain assistance in getting the clearance from the O. D. T. and the War Production Board.

Mr. WHITTLESEY. You mean he was using those great big trailer trucks?

The WITNESS. No; I do not mean anything of the sort.

Mr. WHITTLESEY. What kind of equipment was it then? I do not understand you, sir. What kind of equipment is he using in there regular busses?

The WITNESS. He is using a truck type of chassis with a bolted-type of body.

Mr. PRETTYMAN. Is that a wooden body?

The WITNESS. They were wooden bodies, yes; they were all he was able to obtain.

And that is only one example. I could cite you a half a dozen different installations or operations where express

472 operations are run.

Now, from Midldetown, our depot in the center of Harrisburg, that operation is run by the Harrisburg Railways and they do give transfers in the City of Harrisburg.

Mr. WHITTLESEY. By the way, do you give transfers on your line into Philadelphia, on your line?

The WITNESS. No, sir.

Mr. WHITTLESEY. You don't do that?

The WITNESS. It is over 6 miles from the center of the city out to the 69th Street Terminal.

Mr. WHITTLESEY. You do not have any transfer arrangement between the Philadelphia Transit Companies and your concern?

The WITNESS. Not at this time; no.

Mr. LANE. I move that the testimony be stricken as you say, incompetent, irrelevant, and immaterial, regarding any comparison with any respondents in the case. As far as I can see, the witness has testified to the result of a telephone conversation which he had.

Col. BARRON. He said he went down there and made a personal investigation.

Mr. HILL. I submit, Mr. Commissioner, the examination is based on hearsay, is not based on any personal examination.

Commr. PATTERSON. We will leave the testimony in and give whatever weight to it it is entitled, in view of the cross-examination.

473 Mr. QUIRK. Mr. Taylor, did you give the gross earnings of the company that you are with; what was it, the Philadelphia?

The WITNESS. Suburban Transit Company.

Mr. QUIRK. Did you give the gross earnings of that company?

The WITNESS. Did I?

Mr. QUIRK. Yes.

The WITNESS. Yes, sir.

Mr. QUIRK. What did you say they are for 1942, a million and some odd?

Mr. HILL. $1,200,000 for rail and $1,400,000 for bus.

Mr. QUIRK. Did you give the net earnings?

The WITNESS. No, sir; I was not asked that.

Mr. QUIRK. Did it have any net earnings for 1942?

The WITNESS. Yes, sir.

Mr. QUIRK. Did it have any for 1941?

The WITNESS. Yes, sir.

Col. BARRON. State what they were, please.

The WITNESS. 1942, the rail system had a net income, before income taxes, of $140,299; and the bus system had a net income for 1942 of $365,990, before income taxes.

Mr. HILL. I am glad the War Department is not up there.

By Col. BARRON:

Q. Now, you have testified that a District fare based on a cent-and-a-quarter would be 7.98, I believe?

A. Seven——

474 Q. All right. What fare to the Pentagon on that rate?

A. I testified that a fare of a cent-and-a-quarter for 6.25 mile average ride would produce a fare of 7.76 cents.

Q. And is that the distance you understand it from the Pentagon Building from there——

A. That is the average distance traveled by the Pentagon workers.

Q. Yes, sir.

A. Between their homes and the Pentagon Building and Gravelly Point Building and T-7 as shown on Army and Navy Exhibit 13.

Q. All right. Now, then, do you consider that the District fare would be reasonable compensation for the travel of these employees from their homes to their places of employment?

Mr. HILL. I object, Mr. Commissioner. There has been no basis laid for any expert opinion of this witness of that sort.

So far he has told us that he was president of a company in Upper Darby, he has not shown the extent of their operations, how are they similar to this 6-mile ride through the District, or on to the Pentagon, he has told us from hearsay he thinks this company in Louisiana is making a profit from operating a special operation.

That is the extent of his information, so far as we now have it from his statement.

Col. BARRON. Shall we go ahead and have him give
475 some more qualifications?

Commr. PATTERSON. If you care to.

By Col. BARRON:

Q. Will you describe some of the other—before you answer that question—some of the other operations that you have had occasion to examine or investigate in recent years?

A. I made an investigation and recommendation in connection with operations in Chicago, San Francisco, Los Angeles, and at Kingsbury Ordnance Depot at LaPorte, Indiana, where the average fare charged by the bus company is a cent a mile.

And recently I made an investigation, in the past month, of the situation at the Ronie Depot.

Q. Rome, New York?

A. Rome, New York, which is served by the New York State Railways operating out of Utica. They had a rate of 35 cents bus mile under contract with the air depot, they rendered a service between the City of Utica and the Rome Air Depot at shift changes.

Q. What kind of a service is that?

A. They operate regular metropolitan type of bus, the same as operated by the companies here in Washington. They run an express service from the center of Utica, New York, to the Rome Air Depot.

Q. How far is that?

A. That, as I recall it—I have not—I had better not
476 guess at that. I am not sure of the exact distance.

Q. It is a number of miles, though?

A. Yes. I also examined the operations of the Dependable Motor Tours of Baltimore and East Shore Transportation, and the transportation operations in Charlestown, South Carolina, for the War Department.

Q. Which of these do you consider comparable to the situation in Washington?

A. Well, there are some elements in all of them that have application. You can not fine two exactly similar situations any place?

Q. No, sir.

A. So far as I know, I have never run across an operation, I mean, two operations that were just alike.

Commr. PATTERSON. What did you do before you started making examinations of these various street car companies?

The WITNESS. I was and still am president of the Philadelphia Suburban Transit Company, among other activities.

Commr. PATTERSON. Well, in order that you might be president of the street car company, what experience other than being president of the company have you had?

The WITNESS. My experience with the company started from the time I received the degree of Bachelor of Science from Massachusetts Institute of Technology in 1920. After that I
477 was employed for approximately one year by the Edison Laboratories.

March 1921, the 16th, I was employed in the car shops of the Philadelphia-Westchester Traction Company.

From there I worked in all of the various departments of the company until 1932, when I was elected president of the company.

In other words, I have performed the various functions of the various operations. I was a conductor for a considerable period of time on a street car, where I also worked in the engineering department.

Commr. PATTERSON. Did any of these various companies change their fare, their rate of fare, as a result of your investigation?

The WITNESS. Yes, sir; there have been instances of that.

Commr. PATTERSON. I think the witness is competent to express an opinion.

Exam. MATTINGLY. Just one more question.

You talked about your investigation which you made at these other places.

How much investigation have you made here in Washington?

The WITNESS. In Washington; I was located here permanently for six months and during that period of time, during a portion of that period of time——

Exam. MATTINGLY. When was that, by the way?

478 The WITNESS. That was from May of last year up until October 1st of last year.

And during a portion of that time, the problem of the transportation to the War Department installations in Washington was charged to the Highway Division of the Transportation Corps.

At that time, I was working with the Highway Division and particularly handled this problem of getting the service started over to the Pentagon Building.

Before I was brought into that question, it was handled by the Miscellaneous Division of the Adjutant General's Office.

Just before I went back to Philadelphia, the problem was assigned to the headquarters commandant of the Washington Military District. There was a period of over two months, probably three months, when the Highway Division of the Transportation Corps was particularly charged with this problem of getting these operations started.

During that period of time, I was quite familiar with the operation, had conferences and talked with the various operators.

Q. And since that time you have been in touch with it, have you not?

A. In a general way, but not as specifically as during the period of time when the problem was directly under my charge.

479 Q. You have studied, have you not, the evidence and exhibits in the case and have helped prepare some of them?

A. I have studied the exhibits in the case as submitted by Major Ristroph and his assistants.

Q. Yes.

A. And have conferred with him on the preparation of a number of exhibits.

Mr. WHITTLESEY. By the way, Mr. Taylor, what is the minimum fare on your own line?

The WITNESS. The minimum fare that we have is 5 cents with tickets for school children and children.

Mr. WHITTLESEY. I mean for a full fare?

The WITNESS. The full fare, our minimum fare is 7½ cents a ticket.

Mr. WHITTLESEY. 7½ cents per ticket, 10 cents cash?

The WITNESS. 10 cents cash, yes; that is correct.

Mr. PRETTYMAN. Is that on a single zone?

The WITNESS. Largely, and most of our operations in a single zone.

Mr. QUIRK. Would you think your company is making too much money?

Col. BARRON. Of course that is irrelevant.

Commr. PATTERSON. Yes.

Mr. QUIRK. What is irrelevant about it?

Commr. PATTERSON. You do not need to answer that question.

Capt. DAVIS. His company is not on trial.

480 Mr. HILL. No, but his method of reasoning is on trial at the moment.

Col. BARRON. His company is not on trial.

Mr. QUIRK. I did not hear that remark, Colonel.

Col. BARRON. I said, his company, of course, is not being inquired into.

Mr. QUIRK. Well, as long as the Commission is willing to take his opinion about the thing, I think——

Commr. PATTERSON. I did not say I was willing to take his opinion or not willing to take it.

Mr. QUIRK. Well, I mean, you are willing to have the reporter take it down at least.

I think that he has expressed his opinion, that is all he has expressed about the operations here, it would be very interesting to know in view of the large net that he had whether he did not think his company was also making too much money.

I think that is a very fair question.

Col. BARRON. Let him answer.

The WITNESS. I think we could haul people from 69th Street Terminal this distance of 12 miles for less than 15 cents, and still make a profit; yes, sir.

Mr. LANE. What do you charge now?

The WITNESS. 15 cents.

Mr. PRETTYMAN. When you say a profit, you mean
481 including return?

Mr. QUIRK. Wait until Chester hears about that.

Mr. WHITTLESEY. Still making a profit, do you mean still in the black; you make a rate of return on your rate base?

The WITNESS. Well, I will tell you, we look at that operation this way, when we established the 15-cent fare, we thought we would make a small profit, we didn't care much, serving the Sun shift, being kind of a mixed operation, the same as your operation to the Pentagon Building, we felt that if we broke even, we would not mind, but it turned out that we are making a rather good profit on the basis of our operating cost, and 15-cent rate.

Of course, this is nonstop express service between our terminal and the shipyard gate.

Mr. WHITTLESEY. If you had not broken even, you would have felt pretty badly about it?

The WITNESS. No, because it wasn't an important part of our operation any more than the Pentagon is of yours, sir.

Mr. WHITTLESEY. Mr. Taylor, this nonstop express operation that you talked about out there, what time of day does that operation occur?

The WITNESS. I haven't the exact hours, but it occurs during our morning rush hour, at shift changes. The busses used in that operation can only be used for that operation in the morning rush hour.

482 Mr. WHITTLESEY. Don't they have three shifts working at that plant?

The WITNESS. That is right.

Mr. WHITTLESEY. So that you have three rush periods in 24 that you can use those busses on; is that correct?

The WITNESS. We do not have much of a rush period between the graveyard and the swing shift at night.

Mr. WHITTLESEY. You mean they stagger them; is that what you mean?

The WITNESS. No, but your swing shift is small, and your graveyard shift is very small down there, and those busses do get back so that we know they can be used on the afternoon rush hour service.

Mr. PRETTYMAN. What type of bus do you use?

The WITNESS. Just what kind of bus is available. In other words, it is mixed in, it is very similar to the way you operate your service to the Pentagon Building.

Mr. PRETTYMAN. Do you bring a load back?

The WITNESS. We have about a 50 percent return load.

Mr. LANE. Is that capacity, the seating capacity?

Exam. MATTINGLY. Let's confine the testimony to the Washington area.

Col. BARRON. All right. We will return to Arlington County.

Do you think he is sufficiently qualified to express an

483 opinion?

(By Col. BARRON:

Q. The question was, would you consider the District fare to be reasonable compensation for the travel of these employees from their homes to their places of employment?

A. It would seem that the operation of the District fare, certainly from the figures here on these exhibits, would produce a return over and above the cost of the operation.

Q. Would you consider reasonable——

Mr. LANE. If the Commission please, he says, "these figures." I do not know what figures he refers to.

The WITNESS. I referred to the figures that I testified to.

Mr. LANE. There are no figures on Exhibit No. 13—Exhibit No. 13 is mileage. Exhibit No. 19, that is the only one I heard mentioned.

What figures on No. 19 are you testifying about that give you the conclusion it would show a net?

The WITNESS. On Exhibit 19——

Mr. LANE. I presume that is the figure that you say you are using?

The WITNESS. On No. 19, I am using the figure of 7.98 cents as the average fare paid by the Pentagon workers for the District fare.

Mr. LANE. 7.98?

484 The WITNESS. That is correct, sir.

Mr. LANE. Well, then, you are not testifying with relation to the Capital Transit operation at all, are you? That 7.98 you are testifying to is the average fare combined of all the companies and hasn't anything to do with the Capital Transit at all.

The WITNESS. The 7.9 cent is revenue collected only by Capital Transit.

Mr. LANE. Where do you find that?

The WITNESS. If you read the exhibit you will see, sir.

Mr. LANE. All right.

Mr. HILL. Point it out.

Mr. LANE. Just point it out to me, sir; you are testifying, I would like to have you point it out so I can tell what you testified to as to the rate of fare within the District of Columbia.

The WITNESS. I am reading the rate of fare within the District——

Mr. LANE. Wait a minute. What exhibit have you got?

The WITNESS. I have Exhibit 19.

Mr. LANE. Rate of fare within D. C.

The WITNESS. That is correct.

Mr. LANE. That is an exhibit headed: "War Department, Military District of Washington, Table No. 8, Analysis of Passengers Carried, Daily Fares paid by the Pentagon and

485 Gravelly Point employees; is that correct?

The WITNESS. Yes, sir. That is correct.

Mr. LANE. All right. Subhead is "Fare in D. C."

The WITNESS. That is correct.

Mr. LANE. Now, where is the 7.9 cents shown as Capital Transit average fare?

The WITNESS. The heading over on the left hand side.

Mr. LANE. No.

The WITNESS. Is headed "Terminal Transit Company," which I had supposed should be Capital Transit Company.

Mr. LANE. I submit now if the witness is going to change the exhibit from which he is testifying, his opinion is perfectly valueless, particularly when we have not had an opportunity of cross-examining the witness who prepared the exhibit.

Exam. MATTINGLY. You mean you have not had an opportunity?

The WITNESS. This shows here the result of the questionnaire which was sent out showing what class of fare was used within the District of Columbia by the various passengers and computed to get an average fare.

It shows here that of the Pentagon employees, 3,046 paid 10 cents fare, 4,466 pair 8⅓ cents fare, and 18,069 used the weekly pass. And with those rates of fare paid to Capital Transit Company, the average fare was computed.

Mr. PRETTYMAN. It isn't Capital Transit, is it; it is
486 A, B, and C lines.

Exam. MATTINGLY. Just a minute, that isn't the fact. Why do you not put somebody on and have him explain the exhibit, I do not understand it.

Capt. DAVIS. I think I can clarify it very easily. These A, B, C, are the different lines on which the people rode after they left the Capital Transit, but in all cases, these amounts are paid to the Capital Transit for the fare within the District, although a lot of these passengers ride the other lines after they leave the Capital Transit, and this 7.98 cents is the average paid to the Capital Transit for people going to Pentagon, whether they rode on the Capital Transit or on the other lines.

Exam. MATTINGLY. That is what I understand.

Mr. WHITTLESEY. I do not think that that is so.

Mr. QUIRK. Well, in other words, it seems to me that the witness has drawn his conclusion, he is the man that ought to be able to tell us what he meant by it.

Exam. MATTINGLY. Well, he ought not to have to go back and forth over the exhibit again. It has been explained by the man that put it in once.

Mr. LANE. If this witness is going to attempt to use it as a basis for his opinion and testimony, aren't we entitled to know that he understands this exhibit in the same manner that we do?

487 Exam. MATTINGLY. He is using one figure out of the exhibit; namely, the final result.

Mr. LANE. That is what I was trying to find out.

Exam. MATTINGLY. If you blow this exhibit out of the water then the final result does not mean anything.

Capt. DAVIS. Mr. Examiner, Mr. Taylor is available at any time for further cross-examination.

Mr. HALL. You mean cross-examination, don't you, Captain?

Capt. DAVIS. Well, further cross-examination.

Col. BARRON. You have examined.

Commr. PATTERSON. I think at this point we will take a recess until 9:30 tomorrow morning.

(Whereupon, at 4:33 o'clock p. m., the hearing was adjourned to Thursday, September 9, 1943, at 9:30 o'clock, a. m.)

488 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B,"
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Thursday, September 9, 1943.

Hearing in the above-entitled matter was resumed at 9:30 o'clock a. m., pursuant to adjournment.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances: Same as heretofore noted.

489 PROCEEDINGS

Commr. PATTERSON. I think that Mr. Taylor was on the stand.

Col. BARRON. Yes, sir. Just a minute, please.

Commr. PATTERSON. You may proceed.

MERRITT H. TAYLOR resumed the stand and testified further as follows:

Direct examination (continued) by Col. BARRON:

Q. Mr. Taylor, considering the trans-Potomac operations of the Capital Transit Company only, that is, Route 22 and R-2, what revenue per bus mile would a cent and quarter per mile produce?

A. 4.9 per bus mile, based on the figures of Capital Transit Company of July 31, 1943.

Q. Would this yield, according to your figures, a profit to the Capital Transit Company?

A. In view of the fact that their operating expenses, exclusive of depreciation, are less than 30 cents per bus mile, and their overall costs per bus mile are about 35 cents, Capital Transit Company should realize a profit from this operation.

The cost of about 35 cents per bus mile includes a rather high charge for depreciation and rentals.

Q. What would be the effect of a cent and a quarter rate on the Virginia companies?

490 A. It would make, should make a profitable operation for them, because the cost to the Virginia companies in rendering this service is slight, because a large portion of this is counter flow traffic which they did not previously enjoy.

The Pentagon and Gravelly Point workers, to a large extent, fill up unused capacity, which would be supplied anyway, in fact, their direct cost in rendering this service is considerably less than Capital Transit which operate their busses empty in one direction.

Furthermore, the operating cost per bus mile of the Virginia companies is considerably lower than the Capital Transit Company.

Q. What effect would a cent and a quarter a mile have on the Capital Transit Company for the District passengers riders?

A. It seems to me, in view of the fact that the average haul from the terminus of 22 and R–2 in the District of Columbia to places of residence of Pentagon Building and Gravelly Point workers is only 2.6 miles, this service is performed in the denser traveled sections of the District in major part where the load factor of Capital Transit Company is high, and if the service would produce a profit at a cent and a quarter a mile, where they only carry a load in one direction, it would seem that it would produce a profit where there is counter flow business.

Q. That is your opinion, that it would produce a profit?

491 A. That is right.

Q. Please explain your cent and a half estimate per bus-mile, or rather——

A. Pardon me?

Q. Please explain your cent-and-a-half estimate per passenger mile contrasted with the cent-and-a-quarter one.

A. The cent-and-a-half figure was intended to be an over-all figure for various parts of the country and based on a maximum allowance for services to Army installations.

The cent and a quarter is really a more prevalent figure. In some cases, services rendered to these Army installations at as low as a cent a mile, although they usually—that usually only covers bare operating cost.

Mr. PRETTYMAN: I did not get the last part of that.

(Record read.)

The WITNESS. That is one cent a mile.

By Col. BARRON:

Q. What charge per passenger mile do the Greyhound Lines charge, if you know?

A. Pennsylvania Greyhound Lines charge a cent and a half a mile, and the Southern Greyhound Lines charge a cent and a quarter per passenger mile.

Q. Does the Philadelphia Suburban Transit Company have any transfer arrangement with any other company?

A. We exchange free transfers in the City of Chester with the Southern Pennsylvania Bus Company.

492 Q. Is the Capital Transit Company Exhibit 60, which was stated to have been secured from the American Transit Association, typical of suburban zone fares, in your opinion?

A. No; I certainly would not consider it to be. The zones are very short on the particular companies shown there.

For instance, Delaware Bus Company is shown, which has rather short zones, and Southern Pennsylvania Bus Company, which has longer zones, is eliminated from the table, and I feel that a table of zone fares that show a charge of around 3 cents per passenger mile is certainly a selected list of companies.

Q. Then, generally speaking, do you believe that the extension of the District fare to the Pentagon Building and Building T-7 at Gravelly Point would produce a sufficient revenue to yield a profit to the companies in those operations?

A. Yes; I believe it would.

Mr. QUIRK. I object to that as incompetent.

Exam. MATTINGLY. Does that answer apply to all of the respondents here, that is, Capital Transit all the way or Capital Transit part of the way and the Virginia bus lines the rest of the way?

The WITNESS. That applies to this specific service between the Pentagon Building and the residence of the Pentagon Building employees in their over-all operations.

493 In other words, I am not considering, in making that answer, the over-all operations or over-all profits or losses of these companies.

I am only considering the travel of these particular people between their homes and their places of employment.

Exam. MATTINGLY. But, I am saying, are you considering the travel over all the bus routes that are here under consideration?

The WITNESS. Yes, sir. And that, of course, is predicated upon a fair distribution of a through fare charge, a fair distribution between the companies involved, which is, as was brought out previous, a matter for the companies themselves to determine and not for us to get into.

By Capt. DAVIS:

Q. Now, Mr. Taylor, from your experience in the transportation field, do you have an opinion as to the practicability of a joint fare arrangement between the Capital Transit Company and the three Virginia companies serving these installations?

A. Well, joint fares are quite common between various companies, and, in fact, a tender was made by these companies for a through fare or joint fare.

Q. And you feel it would be entirely practicable to have such arrangement?

A. Well, it is always practical to make a division of charges or rates, to adjust them between two companies.

Mr. HILL. I understood you to say, Mr. Taylor, that your
494 company did not join in such fares. Is that correct?

The WITNESS. No, sir. That is not correct.

The question that you asked me was whether we had a through fare with the Philadelphia Transportation Company. My answer to that was no. We do have a through fare between—through fare, joint-ticket arrangement with the Southern Pennsylvania Bus Company at Sharonville, we exchange free transfers with that company in the City of Chester.

We have a fare—joint-fare arrangement with the Philadelphia and Western.

Mr. HILL. Is that a joint ticket in the case of the Sharon Hill connection?

The WITNESS. It is a joint ticket in the case of the Chester, in the case of Southern Transit, a free transfer, and with Philadelphia and Western it is joint ticket from Norristown to Sun Ship in Chester.

Mr. WHITTLESEY. Do you give a free transfer in the case of this 15-cent fare to this Army installation?

The WITNESS. No; on this express bus, we don't go direct like this service which comes within about 3 blocks of the local service with the two zones, we give free transfer.

Mr. WHITTLESEY. You have two zones?

The WITNESS. There are two zones; yes.

Mr. PRETTYMAN. What is the fare?

495 The WITNESS. 7.5—7½-cent ticket; with children ticket 5 cents.

Mr. PRETTYMAN. That is, per zone?

The WITNESS. Per zone; yes, sir. And on the basis of those zone fares, on the basis of the 10-cent zone fare per passenger coming up from Chester, can transfer to other lines of our company for a cent. But on the express bus, there is no opportunity for transfer, it is point-to-point service.

Mr. PRETTYMAN. There is no transfer with the Philadelphia Metropolitan Lines?

The WITNESS. No; we have no transfer with the Philadelphia City System. Their terminal is about 6 miles from the business center.

Mr. WHITTLESEY. Is there any affiliation, direct or indirect, between this Chester concern and your outfit?

The WITNESS. No, sir. Our company is an independent company and the Chester concern is owned by the United Gas and Improvement Company, indirectly.

By Capt. DAVIS:

Q. Well, in view of the fact that your company is so much farther from the center of Philadelphia than are these Virginia companies here involved, you would not say that their situation is entirely comparable to the situation here, would you, insofar as practicable and desirable, to these installations?

A. No; it would not be profitable, our terminal is the same distance from the center of Philadelphia that the Pentagon
496 Building is from the average home of these residents, namely six miles, about.

Q. Now, where there is an appropriate situation for a joint fare as you have indicated, is there any difficulty usually in arranging a fair division of joint fares between the companies involved?

Mr. LANE. I object to that question; the witness has not shown his qualifications to answer it.

Commr. PATTERSON. Well, it is just his opinion. I assume that you will have witnesses of your own to testify to that matter.

Mr. LANE. I do not believe we will have them testify as Mr. Taylor has, though.

Of course, this is a question of fact rather than opinion on this thing.

In other words, just because of this man's experience, where this Commision thinks it knows what is necessary and incident to some of these things, it is not demonstrated as yet——

Commr. PATTERSON. Let him give his opinion. I think that will expedite the hearing.

The WITNESS. Why, the question is pretty broad and it really just depends upon whether, who is doing the bargaining——

Capt. DAVIS (interposing). Well, there are very definite criteria for reaching a conclusion, are there not, sir?

Commr. PATTERSON. It is well known that joint fares are
497 made all over the country with respect to all sorts of carriers.

Mr. QUIRK. It is also well known, Mr. Commissioner, not always an easy matter for carriers to get together.

Mr. LANE. In fact, even the law provides for means of settling disputes between them.

Commr. PATTERSON. That is right.

Capt. DAVIS. Is a mileage basis a factor to be considered?

The WITNESS. There are a lot of factors.

Commr. PATTERSON. I do not believe that it is necessary to go into the method of fixing joint fares. We are well informed as to that.

Capt. DAVIS. I just want to show that it is not entirely impracticable as contended by counsel.

Commr. PATTERSON. No; it is done every day.

Cross-examination by Mr. DUNLOP:

Q. Mr. Taylor, I believe you said that you thought that it was a reasonable fare to charge the same district fare, same rate as the Capital Transit district fare to the Pentagon Building on this service?

A. Yes, sir; and if the Pentagon Building were, if the District line were a little definitely established, there would not be much question.

Q. Well, now, let's see just a moment, looking at it from this point of view, and you say in that connection that it is fair to charge these people, these people from their particular
498 residences to the Pentagon Building, the same fare that they go anywhere in the District on the Capital Transit regular lines—is it fair to charge them the same rate that they pay at present to go from their residences to a point three and a half miles further?

In other words, to put it this way, is it worth nothing more, should we not charge them something additional to go 3½ miles farther than they are now going?

A. Well, if they went 3½——

Q. On a special service.

A. If they were going 3½ miles in another direction, they would not have to pay an extra fare.

Q. They are going, you realize they are going an additional 3½ miles that is not served at the present time by the Capital Transit Company.

A. And that which——

Q. (Continuing). And on busses especially provided for this service, 3½ miles, is that worth nothing, cost nothing?

A. It would seem to me that the determination of the cost should be the value of the service rendered, not whether something is in addition to something else.

Q. We are talking about the service rendered, which is an additional service to them, which they are now getting, and it is 3½ miles farther for each one of those people.

Is that worth nothing?

499 Exam. MATTINGLY. You say "in addition to that which they are now getting." I think the record is clear, you mean in addition to the service which they would get under the arrangement; is that what you mean?

Mr. DUNLOP. I mean the service which they are now getting is 3½ miles farther than the service which they were getting before the Pentagon Building was moved over there.

Exam. MATTINGLY. Well, that is different.

Mr. DUNLOP. From the District of Columbia.

The WITNESS. I do not think it is any more inconsistent than charging the same fare to a person coming down from Chevy Chase than you charge a person coming down from Sheridan Circle.

Commr. PATTERSON. What would you say with respect to a man coming from Chevy Chase, Maryland, just across the line. Are you familiar with that section out there?

The WITNESS. I am familiar with that. I believe they have a 3-cent zone outside of Chevy Chase where they charge a zone fare.

Mr. QUIRK. For instance, you said that you had two zones, didn't you?

Exam. MATTINGLY. Well, wait a minute. There is a 5-cent cash fare and there is a 3-cent commutation ticket if you buy a book, that is the situation, isn't it?

The WITNESS. I have understood there was a commuta-
500 tion rate outside Chevy Chase Circle. That distance, sir, from Chevy Chase, to the center of Washington or other people living beyond the Maryland line, is a good deal farther than it is from the Pentagon Building to the center of Washington.

Commr. PATTERSON. What do you do, start all your passengers from a zero post?

The WITNESS. No; the way this was determined, sir, was the residence of each employee in the Pentagon Building and Gravelly Point building was determined, and those residence places were planned on a map of the City of Washington, divided into small squares.

The distance from each one of those squares by the nearest public transportation route was determined to the Pentagon Building and to the Gravelly Point building, and then a weighted average was arrived at, considering any residents in Maryland as arriving at the District line nearest point and then taking the District line through the District to the Pentagon Building and Gravelly Point, and that is the way that the average, something over six miles, 6.21 miles, was arrived at.

Mr. QUIRK. Mr. Taylor——

Mr. WHITTLESLEY (interposing). Mr. Taylor, pardon me.

Mr. QUIRK. Will you describe the basis of zones on your line between Chester and wherever it runs, how do you mark them out?

The WITNESS. I don't believe I understand.

501 By Mr. QUIRK:

Q. You said you had two zones, didn't you, down to Chester?

A. That is right.

Q. Well, where is the first zone?

A. I haven't our tariff and all of our zones detailed here.

Q. You have not? You know all about these other companies, don't you know about your own?

A. Well, I know considerable about my own.

Q. Well, that is very——

A. Only we have a rather complicated structure on our Chester line, we have two long zones with a long overlap.

Q. Well, where——

A. (Continuing.) And then we, in addition, have an overlapping zone, it is a build up from the fact that there were three different operations involved in the formation of that line and even as you gentlemen here fail to recognize that there is a 3-cent fare out at Chevy Chase, it is very hard to keep all those things in your head.

Now, I know that you can ride for one fare out to Woodlawn Avenue and Baltimore Pike, for example, but we recently made a change in zones on that line, there were three zones, we cut one out and made it two zones.

I am not positive, but if you want it I will supply the information accurately.

Q. All I want is this: You have two zones. Now, those zones end somewhere, don't they?

502 A. Yes, sir.

Q. All right.

A. They overlap.

Q. All right. Now, the fare is 10 cents in each zone?

A. 10 cents or a ticket.

Q. Unless you buy a ticket.

A. Yes.

Q. That is right. Now, a passenger pays 10 cents in one of those zones. If he goes just two squares beyond that zone, he pays another 10 cents?

A. Why, it——

Q. Isn't that one zone?

A. That is why we have this overlapping zone.

Q. That is the reason we have all these zones.

A. We have the first zone and second zone, and then we have an overlapping zone in the middle which takes care of that discrimination between passengers.

Q. Can you conceive, Mr. Taylor, a man of your experience, can you conceive of any zone system that would not bring about these conditions?

A. All you can do is to do your best to correct them.

Q. Now, for example, I live in Chevy Chase. If Chevy Chase was just a square above where it is, I would not have to pay another fare.

A. Well, you probably walk down anyway, don't you?

503 Q. Well, it is a question.

A. I don't believe anybody is going to pay an extra fare for two blocks unless they are crippled.

Q. You do not estimate the fare there because it is there, do you, that extra 5 cents?

A. You have to have a zone limit somewhere.

Q. Well, certainly.

A. You have to establish, where you have a mass movement of people such as you have at Pentagon and Gravelly Point, with a terminal at the Pentagon Building, it is fair to assume that a rate should be set up to accommodate those people where there is a large flow of business.

Now, certainly, if you have isolated cases there are going to be some discrepancies in a zone fare, but I think when you have a number of people traveling every day that you have at the Pentagon Building and Gravelly Point a discriminatory fare situation should not exist and the fare should be set up to take care of a large mass movement of people.

By Mr. PRETTYMAN:

Q. Mr. Taylor, directing your attention to the Philadelphia situation and your reference to the Chevy Chase situation, as I understand it, you have two zones that cover 12 miles. Right?

A. Approximately; yes.

Q. So that it is approximately a 6-mile zone, is that right?

A. Approximately; yes.

504 Q. Now, if a man started from a point a mile inside the Philadelphia City limits and gets on a Philadelphia streetcar, rides downtown in Philadelphia, and rides say eight miles for a Philadelphia City fare——

A. Well, he could ride 15 miles if he wanted to.

Q. Now, when that same fellow gets on, comes by streetcar from your portion of the service—well, when he comes to your portion—when he leaves the Philadelphia City Line, he has paid a city fare, and he gets on your line and pays 10 cents for the first 6 miles.

A. Approximately.

Q. And if he wants to go an additional 3 miles in your direction, it costs him the Philadelphia City fare and two zone fares on your system; is that right?

A. That is correct, in some instances.

Q. All right. Now, you do not consider that the comparison with the distance that the fellow can travel for the Philadelphia City fare going downtown in Philadelphia from a mile inside the line is a fair criterion of what you think a fare ought to be if the fellow is coming out a mile instead; isn't that right, you have got to have your line and the city line involved, don't you?

A. We do at the present time have a definite demarcation between our system and the city system, there never has been agreement based on a joint fare.

505 Q. And it is not your opinion that because a man can get on a streetcar a mile inside the Philadelphia city line and ride 10 miles downtown for a Philadelphia fare, that he should be given a free transfer from the Philadelphia city line to ride on your line 7 or 8 miles, or 10 miles?

A. There is very little of that business where a person would be a mile inside the city and would want to ride on our line. There is a very small movement there.

Mr. PRETTYMAN. I am just referring to the Philadelphia situation as a guide, and it is perfectly obvious that you cannot use it in your own case, in your own company.

Mr. WHITTLESLEY. Before we leave that Chevy Chase situation——

Capt. DAVIS. Pardon me. Let him answer Mr. Prettyman's question before we go into another one.

Mr. WHITTLESLEY. I thought he had answered.

The WITNESS. I think the question was involved.

Commr. PATTERSON. Repeat the question.

(Record read.)

The WITNESS. I do not thing that that is a question.

Exam. MATTINGLY. Well, add an "is it not?" at the end of it.

The WITNESS. I do not think I understand it, sir.

Mr. WHITTLESLEY. Just to summarize the question, Mr. Taylor, you referred to the situation of a man getting on the
506 streetcar in Chevy Chase and riding downtown. Now, I just want to bring in your own company situation and ask you a few questions.

By Mr. WHITTLESLEY:

Q. A man in the north end of Philadelphia can ride on the city transit system and once he crosses the city line he gets another fare and if he crosses into another zone he gets another fare.

Do you think it is eminently fair to bring out that situation?

A. We have a number of instances where there is a mass movement where our lines go into the city some distance, for instance, down to the Westinghouse plant and the Brill plant, and rather than have a free transfer or transfer arrangement, the Philadelphia companies permit us to go over into the city limits to a certain extent and they come outside of the city to a certain extent. And there are other places where it is justified.

By Mr. PRETTYMAN:

Q. I understood you to testify yesterday that you only run into Philadelphia. I think you said it was similar to the distance that the Capital Transit runs outside of the District line.

Do you mean you run quite a number of miles into the City of Philadelphia, but not 15 miles?

A. No; I would say that over to the Brill plant from the city line is about a mile, and to the Westinghouse plant at
507 another point we run in a matter of a few blocks. I think the deepest penetration of the Philadelphia Transportation into Delaware County is a half or three-quarters of a mile, they come out over the city line and charge a city fare, and they do have an operation from Philadelphia down to Chester, where they charge an additional fare over the city fare at a point outside the city limit.

By Mr. WHITTLESEY:

Q. Mr. Taylor, in making this comparison with the Chevy Chase route, do I take it from your statement that you consider the elements of service that are presented in the bus operation from Chevy Chase to the Treasury Building is the same as the element of service present from the Treasury Building over to the Pentagon; you made the comparison between the two situations, and now I am asking you are the elements of operation the same?

A. I do not know what you mean by the elements of operation.

Q. All right. Did you consider on and off traffic in making this comparison?

A. Yes.

Q. Did you consider the suburban areas and the possibilities of picking up passengers all along the Chevy Chase route clear down into the business section as compared with the fact that the operation from the Treasury Building over to the Pentagon is primarily through United States parkways?

A. I do not see that that was particularly relevant, be-
508 cause after all the revenue that they take in from operating a bus mile is really the controlling factor.

Q. That is the only factor that you considered in making this comparison?

A. That is revenue against expenses for a certain given service. Now, an express service, when you are running in a special service from the Pentagon Building to the City of Washington, your operating costs are large. That is because of the stops and starts, higher speed, and so forth. There are a lot of factors that come into the situation.

Q. They are increased, aren't they, by the fact that this is a one-way rush hour service and you have to have a lot of equipment available?

A. The mileage was computed for the round trip, we didn't only take the mileage for one-way travel of the people, we took the mileage in the opposite direction in computing the revenue.

Q. That is 7.989 miles that you were talking about yesterday?

A. I do not think I talked about any figure like that.

Q. No; I am sorry, it is 6.2. That was a round trip, I understand now that you are considering?

A. No; that figure has nothing to do with it. That is the distance.

Q. Oh, I beg your pardon.

A. That is the distance from the average employees home to the place of work at the Pentagon building, Gravelly
509 Point, T-7.

Q. Oh, I see. In other words, what you are saying now is that in computing or considering the cost and consequently the fares to be charged on a one-way rush hour service, you considered the trip over the route and then you doubled the mileage for the deadhead trip back in order to arrive at the cost of your fare, is that correct?

A. That is correct, where the bus made the round trip.

By Mr. PRETTYMAN:

Q. How many miles is that round trip?

A. Over R-2—I had better look at this. R-2 mileage was 7 miles for the round trip.

Q. At a cent-and-a-quarter, what would that be?

A. A cent-and-a-quarter for 3½ miles——

Q. No; you said 7 miles.

A. No; I did not figure the fare on the round trip. Of course, that would be ridiculous.

Q. Well, if the bus comes back empty, you said you figured the passenger bus mile on the round trip.

A. Mr. Prettyman, I figured the revenue not the rate of fare on the round trip. In other words, charging a cent-and-a-quarter for the one-way trip produces a revenue of 40.9 cents per bus mile for the round trip.

Do you understand?

Mr. PRETTYMAN. I understand what you have done, but I just don't understand where you brought in this matter of
510 figuring the round trip.

Will you just tell me? What you have just told me was you got 7 miles when you come to a cent or cent-and-a-quarter which I thought was your revenue for passenger bus mile, you only employ that one way.

The WITNESS. You apply your rate of fare to the trip traveled to get your total revenue, and then you divide your total revenue derived from this cent-and-a-quarter per bus mile traveled, divide that by the total miles, all the miles that are operated for a month, and you arrive at a bus mile of 40.9.

Mr. PRETTYMAN. Well, have you got those figures that you computed, please, on that basis?

The WITNESS. I computed it personally.

Mr. PRETTYMAN. Have you got those figures?

The WITNESS. I have; yes, sir.

Mr. PRETTYMAN. What was the total miles traveled by Capital Transit Company on a typical day on Q-2 or R-2?

The WITNESS. 2,000.3 bus miles.

Mr. PRETTYMAN. Per day?

The WITNESS. That is correct.

Mr. PRETTYMAN. Well, now, in computing these rates, Mr. Taylor, you testified yesterday that you knew of a company or heard of a company which was operated successfully at a cent-and-a-quarter, I think, or approximately a cent-and-a-half, it was.

511 The WITNESS. We are operating ourselves at a cent-and-a-quarter and making a profit. I am quite familiar with that.

Mr. PRETTYMAN. You are. You didn't mention that yesterday.

The WITNESS. Yes, sir; I explained that we are operating 12 miles for 15 cents which is less than a cent-and-a-quarter; have you calculated that?

Mr. PRETTYMAN. But you are also using that same equipment on other runs?

The WITNESS. At times, at certain times.

Mr. PRETTYMAN. And are you computing the cost individually on that equipment between the time that it is devoted to the one-way run to the Sun Shipyard and the time that it is used in other business, have you broken down those figures?

The WITNESS. It is almost impossible to segregate it accurately in our small business, one small piece of an operation from your over-all cost.

We know that we are taking in a revenue representing 40 cents a bus mile, and we know that our operating, over-all operating

costs are, we know what they are, and we further know that the rendering of that service is no more expensive service to us than any rush hour service.

Mr. PRETTYMAN. Can you prove that by your books?

The WITNESS. You cannot do it by your books, we do not keep the books, you do not keep the books in that way. I do not
512 think that any company keep their books segregating expenses of particular routes and trips, I would be very much surprised if any company did that.

Mr. PRETTYMAN. You would be surprised then if the War Department asked for it.

Mr. WHITTLESLEY. He means the United States.

Mr. PRETTYMAN. Asks for that—for those figures by individual routes.

The WITNESS. I said by our books.

Mr. PRETTYMAN. By the books of the company.

Col. BARRON. What counsel for the War Department think is not material.

Mr. PRETTYMAN. I believe that the gentleman is consultant for the War Department on transportation matters.

Col. BARRON. That is right.

Mr. HILL. Were you consulted about it before the sudden decision of yesterday to require us to produce information about individual lines?

The WITNESS. I am not entirely familiar with just exactly what the Colonel requested.

I believe that the Colonel made his request before I was called down on this case.

Is that true, Colonel?

Col. BARRON. I believe so.

The WITNESS. I believe so, and, of course, when you talk
513 about segregating expenses by your books, of course, the answer has to be that you don't do that by individual lines, but you can make a very good estimate of your expenses if you sit down and compute it.

Mr. LANE. From what?

The WITNESS. From the information that you have available and your knowledge of the particular operation.

Mr. LANE. But not from the books?

The WITNESS. Well, some of the figures may be from the books, of course.

Mr. LANE. Where do the rest of them come from?

The WITNESS. From traffic studies, things of that kind.

Mr. LANE. Traffic studies?

The WITNESS. Yes.

Mr. LANE. Well, now, you said——.

The WITNESS. In other words, your book of accounts, as you well know, won't show the mileage traveled on certain specific trips. That would be ridiculous, because you would have——

Mr. LANE. Won't show mileage traveled on particular trips?

The WITNESS. No.

Mr. LANE. Your manifests won't show that?

The WITNESS. They are not your books, sir.

Mr. LANE. Don't you transfer that information from the
514 manifest to the books?

The WITNESS. Some information is, some information is not. But books of account are entirely separate and distinct from any question of——

Mr. LANE. Don't you compute your mileage monthly, daily, on your operation?

The WITNESS. Compute our mileage?

Mr. LANE. Yes.

The WITNESS. Daily and monthly?

Mr. LANE. Yes, sir.

The WITNESS. Yes, sir. Our over-all mileage is computed.

Mr. LANE. And isn't that set down somewhere in the books of your company?

The WITNESS. It is not carried on our books. It appears on our statement. When we break our costs down on bus-mile, those figures do not appear in your books of account.

Mr. LANE. It appears in your records?

Mr. WHITTLESLEY. In other words, you are distinguishing between finance records and statistical records?

The WITNESS. The question is our books. And my understanding——

Mr. LANE. Well, amend the question to include the books and records of your company.

The WITNESS. Of course, our records show the mileage operated on any particular trip or any particular day from
515 our manifest.

Mr. LANE. But you have testified that your books and records would not enable you to break down and segregate——

The WITNESS. I didn't say——

Mr. LANE. The individual lines?

The WITNESS. I did not mention the records. I said the books.

Mr. LANE. All right then, I will amend my question, Mr. Taylor, to say: Will your books and records permit you to segregate the cost and the revenue of each of the individual lines of your operation in Chester?

The WITNESS. In Chester?

Mr. LANE. Yes; in the Chester operation.

The WITNESS. Well, that is only one line.

Mr. LANE. Well, all right, that is what I asked you, can you give the accurate figures of that one line?

The WITNESS. I can't today, but they can be calculated.

Mr. LANE. The entire cost, expenses, and revenue from that line as distinguished from every other line in your operation.

The WITNESS. I feel that it can be closely determined—now——

Mr. LANE. Not actually.

The WITNESS. There would have to be certain assumptions; for instance——

Mr. LANE. Yes?

516 The WITNESS. For instance, Mr. Lane——

Mr. LANE. Well, you can't.

The WITNESS. No; just a moment, let me answer.

Capital Transit Company allocates overhead between their rail and bus operations. It cannot be computed to the penny, but they have a method of allocation which is as accurate, probably, as they can arrive at it. We do the same thing.

For instance, my salary is allocated between the bus company and the rail company.

Now, I will explain a little more. I will spend a little more time on the bus company or the bus division or the rail division, but my plan is allocated, or my salary is allocated on a percentage of the gross revenue basis.

Now, that is not exactly accurate, but it is the general practice and considered to be a reasonable basis for the allocation of overhead expenses in proportion to the volume of business done.

You cannot determine any of these things out to the decimal point, but you can come very, very close.

Mr. LANE. Give an approximation, that is what you are saying?

The WITNESS. A proper allocation of charges in proportion to the amount of business done or the miles traveled on a given route.

517 Mr. LANE. But you have testified, Mr. Taylor, that a cent and a half approximately was a fair return for a bus mile.

What factors did you use to arrive at that conclusion?

The WITNESS. A good many, the mileage of a good many operations that are operated at less than that.

Mr. LANE. I want the factors that you used.

The WITNESS. The one factor is the mileage of operations.

Mr. LANE. That is a method.

The WITNESS. I would not say that was a method.

Mr. LANE. Let me have the bookkeeping, and I use the word "bookkeeping" literally, factors that you used to determine that a

profitable operation could be managed at approximately a cent and a half per bus mile.

The WITNESS. Can be maintained in most cases at a cent and a quarter.

All you have to do is to consider, you take a 40-passenger bus and usually on these rush-hour services such as we are conducting, or talking about, you carry a 50 per cent overload, that is 60 passengers in a 40 passenger bus, 20 standing. If you take 60 passengers at a cent and a quarter a mile, that produces a revenue of 75 cents per mile in revenue service, if you have 50 per cent overload. And even if you only had a seated load, you would be getting 50 cents a mile.

Now, we know that operating costs in the most part approximate 30 cents a bus mile, some are a little higher, some are a little
518 lower, but if you take 30 cents a bus mile, it will come pretty close to your average operation.

Mr. LANE. Those are all the factors you have used in computing this figure?

The WITNESS. The factors of mileage and the load characteristics were used in the case.

Exam. MATTINGLY. That is not an assumption of the load but actual?

Mr. WHITTLESLEY. What load characteristics?

The WITNESS. Those load characteristics are shown in the tabulation by the War Department of passengers carried.

Mr. LANE. Well, are those the only factors you have used in determining this to be a fair and reasonable return?

The WITNESS. Well, the most important factor in connection with that, as far as the Virginia companies are concerned——

Mr. LANE. I am asking you now regarding the——

Col. BARRON. I think it would be better if he could finish his answer before he asks another question.

Mr. LANE. I do not believe that the answer was responsive to the question, Colonel.

Capt. DAVIS. He did not get a chance to finish his answer to the question.

Col. BARRON. That has been going on continually, you won't let him finish his answer.

I would appreciate it if he could be permitted to answer a question once it is asked of him.

519 Mr. LANE. I will be very careful.

Had you finished?

The WITNESS. There are different factors involved in the trans-Potomac operation of the Capital Transit Company and the operation of the Virginia companies, so I cannot give you an answer that is all-embracing.

Mr. LANE. Well, I understood you to testify yesterday that a cent and a quarter to a cent and a half was a reasonable return for any company.

The WITNESS. I did not testify that.

I said that approximately a cent and a half, in the neighborhood of a cent and a half, should yield a profit on this type of operation to any company.

Mr. LANE. Well, that is just what I repeated, isn't it?

The WITNESS. No; you said something entirely different.

Mr. PRETTYMAN. Would you mind if I just read from the record, Mr. Taylor, just to refresh your recollection, just exactly what your testimony was?

The WITNESS. The testimony yesterday may have been confused. I was not following counsel as closely as I might, and he had his questions a little different, and if the record is wrong, I would like to amend it at this time.

Mr. PRETTYMAN. Suppose I read to you what the question was and what you said yesterday.

The WITNESS. All right.

520 Mr. PRETTYMAN. The question was: "What would you consider a reasonable revenue, based on your experience, for this type of operation per passenger mile for service between the homes of these employees and their place of work?"

And your answer was: "In the neighborhood of a cent and a half per mile."

The WITNESS. These employees——

Mr. PRETTYMAN. And the Colonel said: "Per passenger mile," and you said, "Per passenger mile."

The WITNESS. And that was the thing that escaped me. I thought the Colonel said for this type of operation in general and that is where we were confused yesterday. The preparation in this case was following a general question referring to this specific condition here.

Mr. LANE. Did you mean per passenger mile or per bus mile; you testified yesterday per passenger mile.

The WITNESS. Per passenger mile. Per bus mile is a figure a great deal higher of course if you cannot operate for a cent and a half a bus mile or a cent and a quarter a bus mile.

Mr. LANE. Well, now, you testified yesterday, if I remember correctly, about an operation in Louisiana which was operated, according to its president, who talked to you on the telephone, at a profit.

521 Do you know the cost of the equipment involved in that operation?

The WITNESS. No; I do not. It is similar equipment to the equipment operated by your Virginia companies, you have some of it in service.

Mr. LANE. Well, would not the cost of the individual pieces of equipment and their capacity have a direct bearing upon the passenger mile cost?

The WITNESS. Yes; I think a 40 passenger bus can carry people cheaper than a 29-passenger bus, per passenger. In other words, where this man is operating a 29 passenger piece of equipment, he could probably, if he had a larger job, a 40 passenger bus, do better on a given rate of fare in the way of revenue.

I think that would also apply to the Arlington and Fairfax, if you had the 40-passenger equipment for your rush hour service, you might be able to do better.

Mr. LANE. Is it your opinion that new 40-passenger equipment used exclusively in the rush hour service at a cent and a half per passenger mile would pay for itself?

The WITNESS. There is very little of that being done anywhere that I know of.

Mr. LANE. I asked you the question.

The WITNESS. If you——

Mr. LANE. Is it your opinion that it would pay for itself?

522 The WITNESS. If it were used only during the rush hour?

Mr. LANE. Correct.

The WITNESS. That would depend upon how long the rush hour lasted in the particular case.

Mr. LANE. Well, let us assume it is an hour rush.

Mr. WHITTLESLEY. Per day?

Mr. LANE. Per day.

The WITNESS. Then that would depend upon the length of trips.

Mr. LANE. Well, then, there are other factors that you did not take into consideration when you made this statement?

The WITNESS. No: there were not other factors that I did not take into consideration.

Mr. LANE. Well, you did not enumerate them to me a minute ago, then.

The WITNESS. I think we got off the point a little bit by a subsequent question.

Commr. PATTERSON. I think we have been off the question for some time.

Mr. LANE. What I am trying to get from you, Mr. Taylor, is all of the factors which go in to make up your conclusion that a rush hour service at a cent and a half per passenger mile is profitable.

The WITNESS. It is definitely profitable, on counter flow business, as it is in your case in large part.

523 Mr. LANE. I am trying to get you to give me the elements that enter into your estimate of what a profitable operation, rush hour operation, could be maintained at; let's not get away from the point.

The WITNESS. Well, the principal points, one of the major point is the flow characteristics of the travel, whether it is counter flow or whether it is not counter flow traffic. In other words, that the Virginia companies—it is definitely counter flow traffic from the District. In the case of the Capital Transit Company it is not; it is one way traffic.

Mr. LANE. Have you—excuse me, you may continue.

The WITNESS. Now, another factor, of course, is the mileage, your loading characteristics, the load per vehicle, your operating cost, they are all factors in this thing.

Mr. LANE. What else? Anything else?

The WITNESS. The time at which the service is rendered is also a factor.

Mr. LANE. And after digging all of this up, are those all of the elements, I do not want to interrupt you.

Now, in case the Colonel is worried about it——

The WITNESS. They are all that I think of, right off-hand, Mr. Lane.

Mr. LANE. Well, the cost of the equipment, in your opinion, would not be material?

The WITNESS. Your cost of the equipment is reflected in

524 your operating costs at 2 cents a bus mile.

Mr. LANE. I did not ask you that question. Will you please answer the question I asked you?

Mr. Taylor, is the cost of the equipment a material factor or is it not?

Answer me just that question.

The WITNESS. The cost of your equipment is a factor in your operating cost; yes.

Mr. LANE. But you did not take that into consideration when you made the statement?

The WITNESS. I said I took the operating costs into consideration which include the cost of your equipment and depreciation. That is an element of cost.

Mr. LANE. Is the wage rate an element of cost?

The WITNESS. Of course.

Mr. LANE. Did you take that into consideration in making this estimate.

The WITNESS. Yes, sir.

Mr. LANE. But you did not give it to me just now as one.

The WITNESS. I said I took into consideration the operating cost and of course the wage rate goes into making up operating costs. I will go down and read the schedule of pounds if you would like.

Mr. LANE. Is it your opinion then, that a rush hour service can be maintained at the average operating cost of a
525 bus company operated on a 20-hour basis?

The WITNESS. In some cases it can and in some cases it can not.

Mr. LANE. Well, take my case, is it a can or a can't?

The WITNESS. In your case here where you are running your equipment any way and you are getting——

Mr. LANE. Pardon me.

The WITNESS. Well, you asked me the question and I was just going to answer you.

Mr. LANE. That is all right, but I did not get to where we are running individual equipment, would we run the equipment if there was no business?

The WITNESS. Your business?

Mr. LANE. I am sticking to my question. I want your answer to these questions as they affect this entire picture, all of the respondents.

Capt. DAVIS. He is entitled to give his own answer.

Exam. MATTINGLY. He cannot give the same answer in connection with all the companies.

The WITNESS. I can't give the same answer in connection with all of the companies because the characteristics of the different companies are different, sir.

Mr. LANE. All right. Let's take the Capital Transit Company as an example, No. 1. Can the rush hour service be main-
526 tained at the same average cost per mile as the average cost per mile over the 24—over the 20-hour day?

The WITNESS. Inasmuch as——

Mr. LANE. No; I would like a "yes" or "no" answer to that.

The WITNESS. I cannot give you a yes or no answer.

Mr. LANE. All right. Then, can it be done by the Arlington and Fairfax?

Capt. DAVIS. Let him answer the question now it has been asked.

Commr. PATTERSON. He said that he could not answer the question.

Capt. DAVIS. He is entitled to explain it.

Col. BARRON. He said he could not give a "yes" or "no" answer. Then he is entitled to explain.

Mr. LANE. Have you any further answer to make to it?

The WITNESS. Yes.

Mr. LANE. The Capital Transit Company, you said you could not give a "yes" or "no" answer.

The WITNESS. Considering the factor of the staggered hours and that a large proportion——

Mr. LANE. Where is the stagger, let's have the practice, what is the stagger, how much of a stagger is it?

Capt. DAVIS. Let him complete his answer and then you may supplement it by further questions.

Mr. LANE. All right.

527 The WITNESS. It is almost impossible to answer some of these questions in view of the fact that the busses used in the Pentagon service in large part come off other routes or would have to deadhead back to the barn if they were not making the trip over to the Pentagon Building.

I feel that because of this—the cost of this particular operation to Capital Transit should not be out of line with their over-all charge.

Now, if these busses were run out, if all these busses were run out just for this particular Pentagon trip and did not do something else as they are doing something else afterwards, it would be an entirely different situation, but the actual facts are that a large proportion of these busses have completed their work of bringing people down to the Navy Building, for example, maybe starts out 8:00 o'clock, the Navy people start earlier, start at 8:00 o'clock, and then those busses are down there in time to take people over to the Pentagon Building where the hours have been staggered so that the employees get there at the starting time of other buildings over in the District.

Mr. LANE. Then it is your opinion that the service rendered by the Capital Transit Company between Washington and the Pentagon Building can be maintained at the same average cost of the balance of their service?

The WITNESS. Approximately so, sir.

528 Mr. LANE. All right.

Now the A. B. and W. Company, they maintain the same service at the average cost.

The WITNESS. The average service they could maintain at the average cost.

Mr. LANE. The Washington, Virginia and Maryland Coach Company?

The WITNESS. In that particular case, I haven't given that as much study as the others because I can't tell you exactly how many trips they are operating, but if they operate only the trips that are necessary, they would make a profit and operate at their average cost, because it is counterflow business.

Mr. LANE. And the Arlington and Fairfax?

The WITNESS. The Arlington and Fairfax, I believe, would make an over-all profit, or rather, their over-all cost of this service would be about their average cost.

Mr. PRETTYMAN. Well, then, your answer is the same for each of the companies.

I think you said in the beginning you could not give an answer for all companies, and now you have given the same answer for each of the companies.

The WITNESS. It is the same answer, but for different reasons.

Mr. LANE. Well, I have not heard any reasons.

529 The WITNESS. The reason is that in the Arlington and Fairfax, in the case of the Arlington and Fairfax, they bring out to the Pentagon Building a return load after taking passengers from Arlington County into the District, otherwise they would come out practically empty in the morning and the reverse in the evening.

Now, that is not true of your Rosslyn Shuttle operation which is a different situation.

Mr. LANE. Well, the answers are all the same irrespective of the reasons; is that correct?

The WITNESS. The answer is——

Mr. LANE. Your conclusion is the same irrespective of the reason, is that correct?

The WITNESS. Yes, sir; that is substantially correct.

Mr. LANE. Well, is it your opinion that a 4-hour service can be maintained generally throughout the United States, on the same basis per bus mile, cost per bus mile, that a 20-hour service can be?

The WITNESS. In general you use your old equipment in your rush hour service.

Exam. MATTINGLY. We are having a little difficulty in hearing you, Mr. Taylor.

The WITNESS. I beg your pardon, sir.

It is customary to use your old equipment that is likely to be fully depreciated in your rush hour trips whereas the

530 equipment that you are currently charging off is usually——

Mr. HILL. Now, I can't hear the witness.

Commr. PATTERSON. Talk to the reporter.

The WITNESS. I said that it is customary to use your fully depreciated or nearly fully depreciated equipment for your rush trips, whereas in your base trips you use your equipment that you are currently depreciating.

However, in general, your rush hour cost per bus mile would be somewhat higher than your base cost per bus mile for the country, as an average.

Mr. LANE. By that you do not mean to imply that the equipment not fully depreciated is not run in the rush hour, do you?

The WITNESS. No; that is run all day as a rule and the old equipment is brought out only for rush hour service to supplement the equipment which is in all day operation.

Mr. LANE. Rush hour peaks are usually in your estimation, run exclusively with old fully depreciated equipment; is that correct?

The WITNESS. To the extent that you have it on hand not running.

Mr. LANE. Well, if you don't have it on hand, then would you still say that?

The WITNESS. Well, most traction and bus companies do.

Mr. LANE. They do?

531 Mr. WHITTLESEY. Pardon m

Mr. LANE. Just a minute.

Do you know that most traction and bus companies have adequate equipment for the full rush hour period today; is that correct?

The WITNESS. I did not say anything of the sort.

Mr. LANE. That is what you implied, sir.

The WITNESS. You asked me about fully depreciated and old equipment.

Mr. LANE. They have adequate equipment.

The WITNESS. I did not use the word "adequate."

Mr. LANE. Well, let me withdraw the question. I will ask you another.

In your estimation, no companies in the country today are required to buy new equipment in order to handle their rush hour business?

The WITNESS. That is not correct.

Mr. DUNLOP. What did you say.

The WITNESS. I said that is not correct.

Mr. LANE. Well, you said a minute ago, if I understood you correctly, that most companies had adequate depreciated equipment.

The WITNESS. I told you I did not use the word "adequate," sir, to the best of my knowledge.

Mr. LANE. Well, what did you mean in answer to the
532 question regarding the companies having depreciated, fully depreciated equipment for rush hour service?

The WITNESS. Could you read my answer to that?

Mr. LANE. I will withdraw the question.

Can you answer me this question:

Now, in your opinion, have the bus companies generally sufficient fully depreciated equipment to meet the rush hour needs?

The WITNESS. No.

Mr. LANE. Well, if they haven't, it is axiomatic they have to buy new equipment, don't they?

Col. BARRON. I cannot see the relevancy of any of this, sir.

Commr. PATTERSON. No; nor I.

Mr. LANE. I think it certainly goes to the witness' opinion as to what he bases his opinion on, his general knowledge.

Commr. PATTERSON. Well, after it is all said and done the witness' opinion seems to be a sort of a horse-back opinion of an experienced operator. That is about what it amounts to, isn't it?

The WITNESS. If Your Honor, please, it is just an opinion based on experience and observation and knowledge of cost.

Commr. PATTERSON. Exactly.

The WITNESS. And operating conditions.

533 Commr. PATTERSON. It is not a computed opinion, but it is a sort of a horseback opinion of an experienced man.

Mr. WHITTLESEY. Mr. Commissioner, I will agree with that, but may I, in behalf of my own line, I think his question is pertinent for this reason, that Mr. Lane may be able to bring out here the elements that we might need in order to prepare the statements that the Colonel has asked us for and particularly with respect to this question of depreciation.

I am very much interested in having this witness explore that to the fullest extent.

Commr. PATTERSON. Well, explore them to the fullest extent, if you will agree to put the statements in.

Mr. LANE. Perhaps we can get Mr. Taylor to supply them for us. Under the circumstances existing in this case right here, is it, in your opinion, necessary, or was it necessary for any of the transit companies to purchase additional equipment for the particular service to these four points involved in this case?

The WITNESS. It was certainly necessary for the company to purchase additional equipment; whether they had to purchase it to serve these War Department and Navy Department installations is another question.

Exam. MATTINGLY. Well, now, do you mean that these particular busses that were bought to be used in that service or that they ought to buy additional busses in order to provide

534 service to all these people?

The WITNESS. Well, certainly they would have had to buy new equipment or lease it.

Exam. MATTINGLY. Well, I am confused.

The WITNESS. They would have to have obtained new equipment anyway, but certainly new equipment was not made necessary by counter flow business from the District when that counter flow

business just about balances the business that goes in in the morning and they bring an equal load out.

Commr. PATTERSON. You include in depreciated busses also obsolete busses for other reasons?

The WITNESS. Yes, sir.

Commr. PATTERSON. Do you advocate using your obsolete and all your depreciated busses in that type of service in order to get a better rate?

The WITNESS. In rush hours you have to run——

Commr. PATTERSON. Just the rush hour service?

The WITNESS. We all have to run in rush hour service anything that will run, all of the bus companies are in the same position.

Commr. PATTERSON. But do you segregate the obsolete and depreciated busses and put them into the rush-hour service, or do you just throw them in with the others?

The WITNESS. We use them only in the rush hour because of their age and the fact that they are more susceptible to
535 road delays and breakdowns, they are kept out of service during the base period as much as possible and only run during the rush hour.

In other words, your whole equipment is usually only run as long as you have a run for it.

Commr. PATTERSON. Yes; that is true, but do you only operate it in that type of service which is characterized as rush-hour service, or do you put them on any run that they happen to be available for?

The WITNESS. At the time that we need them, yes, we put them on anywhere on the system in the rush hour, the peak of business.

Mr. LANE. You testified, Mr. Taylor, I believe, that there was no necessity for any of these companies buying additional equipment in order to handle the rush hour business to these four points in question.

The WITNESS. No, sir; I did not. You certainly need additional equipment to carry the load from points in Virginia to the Pentagon Building.

Mr. LANE. That would be rush hour equipment, would it not?

The WITNESS. Yes, sir; that was absolutely necessary to have additional equipment to carry people from points in Virginia to the Pentagon Building.

Mr. LANE. But not necessity for buying additional equipment on the part of any company to carry passengers from
536 Washington to the Pentagon, Navy, Army Air Forces, or Gravelly Point?

The WITNESS. I would not go as far as to say that, Mr. Lane. Capital Transit Company probably could assign reasons for the purchase of some busses for this particular route. Just exactly

how many I do not know, but they no doubt will supply those figures themselves, accurately.

Now, I think——

Mr. LANE. Well, let's deal with the Arlington and Fairfax for just a moment.

Have you made a study of that?

Exam. MATTINGLY. Had you finished your answer to the other question? If not, go ahead and finish it.

The WITNESS. Thank you, sir.

There are several situations which are different from the general situation. Now, I am not testifying as to the effect on the Navy. They will testify to that themselves. I am testifying in connection with the Army installations. We have the two special conditions.

One special condition is your service to Gravelly Point by the A. B. and W. I believe that that requires some additional trips that would *would* not have been made for counter flow traffic.

We have a particular situation in connection with your Rosslyn Shuttle line which is different from your counter
537 flow business outside the District, and to put on the Rosslyn Shuttle, of course, required some equipment for your company.

Mr. LANE. Then, as a summary of your testimony, the A. B. and W. might have been required to buy some additional equipment for the rush hour service?

The WITNESS. From Washington to Gravelly Point?

Mr. LANE. From Washington Gravelly Point.

The WITNESS. Yes, sir.

Mr. LANE. And the Arlington and Fairfax from Rosslyn?

The WITNESS. Yes. Of course, that was an all-day operation and I know you took it off, and whether you have got it back on again, I am not certain.

Mr. LANE. Do you know how many pieces of equipment we bought for the operation involved?

The WITNESS. I understand it was one.

Mr. LANE. Do you know how many pieces of equipment the rush hour service involved?

The WITNESS. I think we have that here. I do not recall offhand, Mr. Lane. You no doubt know.

Mr. LANE. Well, if O. D. T. authorized the purchase of certain equipment for the rush hour service to these four installations, you would think that perhaps they were in error?

The WITNESS. No, sir. I would not, because they need it, and you will recall I was of assistance to you in obtaining the equipment you referred to. They needed that equipment
538 for serving Virginia communities for passengers destined

to the Pentagon Building, and that was the reason that the assistance of the O. D. T. was requested by the Army to expedite equipment to your company and also the A. B. and W.

Mr. PRETTYMAN. Did I understand you assisted at that time, Mr. Taylor? You mean you were a War Department consultant at that time?

The WITNESS. Both the A. B. and W. and the Arlington and Fairfax Companies were very much in need of equipment when the Pentagon Building opened.

A large percentage of the Arlington and Fairfax equipment was not in operating condition, broken down, in their barns, could not run——

Mr. LANE. Just a minute, now, I would like the facts on that, on this statement.

The WITNESS. I was out there to your barn, Mr. Lane, went all through it with the superintendent.

Mr. LANE. And a large proportion of it was broken down? What proportion at the time you were out there?

The WITNESS. At the time that I was out there, it was approximately one-third of the busses that could not operate.

Mr. LANE. How many busses did we have, what date was this, let's be specific.

The WITNESS. I have all the figures but not here, they are all in the War Department records, but I haven't got the
539 figures here.

Mr. LANE. Well, you say one-third, you must have some idea of the number involved in the third, a third of the whole.

The WITNESS. It is pretty hard to remember the details of the number of operations that I have had to have something to do with in the last twelve months.

It is not possible for me to carry in my head just exactly how many busses you had on a certain day.

Mr. LANE. Do you know what day it was?

The WITNESS Not offhand, I cannot remember the particular day today.

Col. BARRON. Will you get those records?

Mr. LANE. I would like to have that figure.

The WITNESS. I will endeavor to get those records. Now whether they have been transferred to New York or whether they are still in Washington, I can't tell you, but I will endeavor to obtain them for you.

Mr. LANE. All right.

Mr. PRETTYMAN. Now, could you get back to my question on the matter of fares.

Did the matter of fares come up for discussion in any of your conferences with these bus companies that you talked to about the Pentagon Building operation?

The WITNESS. I do not recall that the question of fares
540 was discussed. That time there was a desperate need for service, and my efforts were directed to obtaining service to get the people over there.

That was the primary concern, and also to see that there were enough roads open so that the busses could run on them. There was a great deal of difficulty in ironing out the service to that building and particularly from Virginia.

We were also much concerned at the time to get the Capital Transit Company to render service over the Q–2 bridge.

Mr. QUIRK. Mr. Commissioner, I think it might be interrupting something else, but this witness is asked if the question of fares arose, and he has been talking about everything else without answering the question.

Can we just keep the question in mind?

Commr. PATTERSON. I think that he went a little afield.

Mr. QUIRK. If the answer were made responsive to the question, we could make a lot more progress.

The WITNESS. I am sorry, sir.

By Mr. PRETTYMAN:

Q. Well, now, as I understand you, you had urged the companies to put on the service to the Pentagon Building, and the Virginia companies put on that service to the Pentagon Building, you said?

A. That is right, sir.

Q. And you were assisting the War Department at that time; is that right?

A. I was working for the local division of the Transpor-
541 tation Corps.

Q. And you do not recall whether the matter of fares came up for discussion at that time or not?

A. There was some discussion of fares in an informal way, as I recall it, but it was not emphasized any.

Q. Did you ever express to any of the companies at that time when you were trying to get this service in operation, that in your opinion the service could be operated from the District on a free transfer from the Capital Transit Company?

A. I do not recall ever expressing an opinion on that subject.

Mr. QUIRK. Mr. Taylor, I have about two questions.

By Mr. QUIRK:

Q. Am I correct in my recollection that in arriving at this revenue figure that you consider adequate, one and a half cent per mile, you used the load factor of 60 passengers per bus?

A. No.

Q. What load factor did you use?

A. If a 40-passenger bus carried an average load of 25 passengers, they would show a profit at a cent and a half per bus mile.

Col. BARRON. Per bus mile?

By Mr. QUIRK:

Q. You say they would show a profit?

A. A cent and a half per passenger mile.

Mr. PRETTYMAN. Profit?

542 The WITNESS. Cent and a half per passenger mile.

Mr. PRETTYMAN. Would show a profit?

By Mr. QUIRK:

Q. Well, I heard you say something about using a 60-passenger bus in arriving at some figure.

Mr. HILL. 50 percent overload he said.

The WITNESS. I said that if you charged a cent and a half per passenger mile and you had a 50 percent overload on the 40 passenger bus, you would take in a revenue of 75 cents per bus mile, which would be rather high.

By Mr. QUIRK:

Q. Did you base that on the impression that there was a 50 percent overload in this service?

A. In the particular service here, and it is a little better now than it was as you cited it, but you carry pretty constant loads during the rush hour periods.

Q. Have you got Exhibit 16-A before you?

A. 16-A?

Q. That is a War Department Exhibit.

A. I will find it.

Q. Now, take the first column on there, that deals with the A. B. and W. passengers from the District to the Pentagon Building during the rush hours of day during 1943.

At the bottom there is a total of 3,949 passengers arriving at the Pentagon Building, and they arrived in 139 busses, so that means an average of 28 passengers per bus.

Would you consider than an over-load?

543 A. No, of course not.

Q. All right.

A. That covers quite an extended period of time. This count goes from 6:30 in the morning until 10:15, which is not entirely a rush hour.

Q. Well, they call it rush hour; that is the Government Exhibit, I understand, War Department Exhibit.

A. Does it say rush hour on here? I do not see rush hour on there.

Exam. MATTINGLY. Second line, subheading, after table 5.

The WITNESS. Yes, sir; I see it on there.

By Mr. QUIRK:

Q. Right at the top.

A. But we do know, sir, that there isn't a rush hour at the Pentagon Building from 6:30 until 10:15. We know that as a fact.

Mr. PRETTYMAN. You think this exhibit is in error in that?

The WITNESS. I would say that the exhibit heading was not accurate.

Mr. QUIRK. Well, that is what the Commission has to work on, that was put in by the War Department.

The WITNESS. I did not make up the exhibit.

Commr. PATTERSON. Well, the witness that submitted this exhibit has not yet been cross-examined. This is not your exhibit.

544 Mr. QUIRK. I understand that.

The WITNESS. No, sir.

By Mr. QUIRK:

Q. Now, there is just one more question, Mr. Taylor. You said you thought in a case of this kind where there was a bus moving to the particular point that the bus companies ought to put in fares to take care of that situation.

Don't you know that the Capital Transit Company has a 5 cent fare from certain points in the District to the Pentagon Building, put in for that particular service?

A. Yes, sir.

Q. And don't you know that the A. B. and W. has a 5 cent fare from the Navy Annex to carry passengers to the Lincoln Memorial?

A. Yes; but there is no 5-cent fare to the Pentagon Building from Lincoln Memorial.

Q. Well, the A. B. and W. serves all four of these points that are involved in this case; you do know about that?

A. Yes.

Q. And don't you know that the A. B. and W. also has a 7½ cent fare, a book that can be purchased, from the Air Force Building to the District?

A. Yes, I am aware of that fact.

Q. Would you say those fares were established for this particular purpose, wouldn't you?

A. I assume that they were, yes.

545 Mr. QUIRK. All right. Thank you.

By Mr. WHITTLESEY:

Q. Mr. Taylor, regarding this equipment, equipment that you assisted these two Virginia companies in obtaining; was that done in your capacity as War Department consultant?

A. Yes.

Q. The companies, however, were proposing to purchase the busses by the use of their own money, were they not?

A. There was no financial assistance to the companies involved. That is, the Arlington and Fairfax, and the A. B. and W.

Now, the assistance insofar—I guess I am getting beyond this question.

Q. In other words, you were assisting the companies to spend their own money to get busses for riding to the Pentagon Building, and as an expert you did not raise the question of fares, is that right?

A. The problem that I was assigned to work out was to get service to the building. That I was trying to do.

Q. Yes.

A. That was the job that was assigned to me at that time.

Q. Regardless of what the fare would be?

A. I was not asked at that time to go into the rates of fare so far as I can recollect.

Q. In other words, your idea was to get service to the Pentagon Building regardless of the cost?

546 A. My idea was to do as I was requested.

Q. All right.

Now this 40-passenger bus route that you were talking about a while ago, which finally resolved itself to 25 passengers at a cent and a half per passenger mile; now you are considering the 60 percent load factor, are you not, throughout the day?

In other words, you are figuring a constant load factor of 60 percent in order to arrive at a cent and a half?

A. I am talking now, or I was referring in this thing to rush hour service, getting these workers from their homes to their places of work.

Q. Now, let me ask you——

A. I was not referring to all day.

Q. In other words, you are saying that if a company has busses used in the rush hour only at a 60 percent load factor that it can make a profit on that operation?

A. I can't generalize that far.

Q. Well, let's go back just a little bit, then.

Did you say that based on the postulate of 25 passengers per 40 passenger bus at a rate of a cent and a half per passenger mile, the operator could make money?

A. In a good many conditions, yes, because—well, I will stop there.

Q. One of the conditions, I presume, would be the fact
547 that you might be able to fill and refill that bus several times during one rush hour trip?

A. That would have a bearing on it.

Q. Yes, sir. Now, just one other question here, sir, about this statement that you made regarding the use of old busses during the rush hour periods:

You stated, did you not, that you did not use old busses except during the rush-hour period because of the high cost involved in the use of that type of equipment.

A. No; I do not think that I did say that. I think I said that the reason old equipment was not used except during the rush hour was because of its susceptibility to road failure, and I might also add due to lack of rider appeal.

Q. There isn't any element then of rush hour service being at higher cost than nonrush hour service by reason of the fact that you use these old busses during that period of time?

A. I do not think that your added maintenance cost on a fully depreciated piece of equipment would be any greater than your depreciation on a new piece of equipment. In fact, I think that it would be less.

Q. All right. Now, that raises the last question.

When you used the expression "fully depreciated equipment," is it your thought that depreciation accruals on equipment should be such that they would fully accrue against the cost of your equipment before the service life of the equipment is
548 exhausted?

A. The war has completely changed our views on service life of equipment. If you cannot get anything else, you find a bus will live a lot longer than you thought it would.

Mr. WHITTLESEY. Mr. Commissioner, will you have the reporter read the question back, please, sir? I do not think that it has been answered.

Commr. PATTERSON. Read the question back, please.

(Question read.)

The WITNESS. By the time it is exhausted, yes.

By Mr. WHITTLESEY:

Q. Well, Mr. Taylor, then how could you have fully depreciated equipment to use during the rush hour service if your last statement is correct?

A. I am afraid my previous answer covered that. In other words, the war has required us to use equipment beyond its normal useful life.

Now, there has to be some element of conservatism in figuring the depreciation. Different allowances are made for different classes of busses by the Treasury Department. The general practice is to write off busses over the number of years allowed for income tax purposes which may be——

Q. That is O. K. Pardon me there, that is a good practice in your opinion, sir?

A. I think it is. In our own case we write off our equipment the same on our books as we do on our income tax returns
549 and those rates are established by the Treasury Department.

Those rates have a little leeway, you cannot assume exactly when a bus is going to be obsolete, so you have to figure a little on that side as well.

Commr. PATTERSON. Would you say fully depreciated rather than obsolete?

The WITNESS. Fully depreciated or obsolete.

Commr. PATTERSON. Well, you consider obsolescence and depreciation on exactly the same basis?

The WITNESS. Well, you make one write-off to cover both.

Commr. PATTERSON. Yes; in the whole kettle of fish.

The WITNESS. Yes, sir.

Commr. PATTERSON. Some of them become obsolete and others become depreciated and you average that up.

The WITNESS. That is the general practice, I believe, sir.

Commr. PATTERSON. You do not consider then the question of obsolescence as being an element of depreciation?

Mr. WHITTLESEY. Is that your statement, Mr. Taylor?

The WITNESS. No; I have just said that our depreciation charge and obsolescence charge, the depreciation charge takes in both factors.

Commr. PATTERSON. Includes obsolescence?

Mr. WHITTLESEY. That is all.

Col. BARRON. You still go ahead and use many of them after they have been fully depreciated?

550 The WITNESS. It is absolutely necessary that bus operators are operating equipment that would be on the scrap heap if they could get replacement equipment.

Commr. PATTERSON. Well, as a matter of practice, isn't it expensive to use obsolete, fully depreciated equipment from a maintenance and operation standpoint?

The WITNESS. It is more expensive, sir, of course, than new equipment, but then if you haven't any depreciation charge, there is your offset between your increased maintenance and your lack of depreciation write-off.

Commr. PATTERSON. It helps you just to the extent you have no depreciation charge-off?

The WITNESS. But you lack so much in rider appeal that it is not sensible to run old equipment if you can get new equipment.

Mr. PRETTYMAN. We are not to understand, Mr. Taylor, that as the War Department consultant in this matter that you are advocating the operation of the Pentagon service with fully depreciated equipment, are you?

The WITNESS. I am in favor of getting as good equipment on there as the Capital Transit will give us, sir.

Capt. DAVIS. I have two or three questions to ask of Mr. Taylor.

Commr. PATTERSON. Is that all the cross-examination of this witness?

551 Mr. HILL. Is this cross examination? I thought we had interrupted the Colonel in the middle of his direct.

Col. BARRON. We had just two or three questions. I thought we had a most exhaustive cross examination.

Commr. PATTERSON. All right.

You may proceed, Colonel Barron.

Col. BARRON. All right, sir. I think Captain Davis has one or two questions here.

Go ahead, Captain Davis.

Redirect examination by Capt. DAVIS:

Q. Mr. Taylor, from your experience in the transportation field and your study of the transportation situation in other cities in size comparable to Washington, do you feel that political boundaries of municipality should constitute necessarily the boundaries for rate making purposes?

Mr. QUIRK. Is that question in the nature of a motion? The witness is asked as to where the boundary is.

Capt. DAVIS. I am asking his expert opinion.

Col. BARRON. Well, let's change the question and ask him if it is a fact that there are many such municipalities.

By Capt. DAVIS:

Q. Well, do you believe that the political boundaries should be the necessary criterion for fixing the fares?

Mr. PRETTYMAN. We object to the question on the ground the witness is not qualified to express an opinion on that
552 subject.

Capt. DAVIS. He is an expert in the transportation field.

Commr. PATTERSON. Let him answer the question: Do you know of any cities where the political boundary does not necessarily fix the zone boundary of the street car line? That is what you want.

Col. BARRON. That is what he means, yes, sir.

The WITNESS. Yes, sir, there are a number of cities where local conditions require or made reasonable the fixing of zone limits other than the limits of the city.

For example, in Boston, the city fare applies into the Town of Brookline.

In Kansas City there is a rate structure which applies outside of the corporate limits of the city, in Missouri.

By Capt. DAVIS:

Q. Does it apply across the State line in that case, too?

A. I understand it does, as shown on the map.

Mr. LANE. Do you know?

The WITNESS. There is some information here submitted by the present traffic engineer of the City of Kansas City which shows that the fare applies, the city fare applies to both Kansas City, Kansas, and Kansas City, Missouri, which are contiguous and more or less in the same relationship as West Philadelphia
553 and the central city in Philadelphia, there are bridges across the river.

Col. BARRON. You obtained that by correspondence with the city authorities there, this information?

The WITNESS. I did not obtain the information.

Col. BARRON. Who did?

The WITNESS. The letter is addressed to T. J. Seburn, traffic engineer, Kansas City, Missouri.

Col. BARRON. Well, will you not read the letter; you have it there.

The WITNESS. "In reply to your request of July 31st, I am enclosing two maps which although they were prepared for another purpose, I believe will answer your question.

"Figure 1, Zone 6, indicates the approximate central business area of Kansas City, Missouri. On Figure 2, will you find the red lines represent streetcar, motorbus and trolley bus routes. The fare arrangement in Kansas City provides for a 10 cent cash fare or four tokens for 35 cents. There are free transfer privileges between all lines, except bus routes No. 2 and No. 5, which do not accept transfers from streetcar routes. There are no fare bound-

aries in the city or in the entire metropolitan area served by the Kansas City Public Service Company.

"Very truly yours,

"T. J. Seburn, Traffic Engineer."

554 Col. BARRON. I would like to ask Major Ristroph just one or two questions.

You have been sworn. I ask you if this letter was received by you in response to an inquiry to which that refers.

Major RISTROPH. Yes, sir. It was. The letter was a general letter of inquiry regarding rates of fare charged in different municipalities.

Col. BARRON. And they sent this map along with it as enclosed?

Major RISTROPH. Yes, sir.

By Capt. DAVIS:

Q. Mr. Taylor, can you tell us a little more about the situation in Boston to which you referred and what the fare schedule is there, generally speaking, as between the streetcars and the subway system and the busses?

A. Well, it is 10 cents fare with three transfers. Then they have some local 5-cent fares outside of the central district.

Q. And does that fare extend not only throughout the City of Boston but throughout the towns of Brookline and the City of Cambridge and various other places?

A. It extends into the City of Cambridge, and also in the Town of Brookline, and just all of the points that that extends to I do not know, but I do know from my personal knowledge that it does extend into the Towns of Cambridge—City of Cambridge and Town of Brookline.

Q. And could you say that generally speaking the fare structure was designed to give the city fare to what might be called

555 an economic city rather than a political city?

A. I do not know the answer.

Q. Well, in other words, the fare structure is not based so much on the political boundaries as on the fact of where people live and work?

Col. BARRON. Population density.

The WITNESS. It is not based on political boundaries, but apparently is based on other considerations.

By Capt. DAVIS:

Q. Yes.

A. I do not know what the considerations were.

Q. Well, now, do you feel that the situation as between the District of Columbia and the Pentagon and Gravelly Point is

the situation where it is more important or more appropriate to consider it as a part of the city for fare purposes?

Col. BARRON. The metropolitan area.

The WITNESS. It would seem to me that logically the Pentagon Building and the Gravelly Point Building should be considered in the metropolitan area of the city of Washington.

Mr. LANE. Do you consider Fort Myer also in the City of Washington?

Commr. PATTERSON. Just a moment.

Go ahead with your question.

Capt. DAVIS. Yes.

By Capt. DAVIS:

Q. And you base that on the fact that it is a mass transportation movement, it is close to the city, that people work there in the same manner as they work in other places throughout the District?

556

A. Well, it is usually customary in a city for a person to be able to travel from their residence within the city to their place of employment for a single fare, although there are many exceptions.

Q. And you feel from your general knowledge of the transportation business throughout the city that this is an appropriate case where such an exception to the political boundaries should be made?

Mr. HILL. Mr. Commissioner, I don't like to object to these leading questions, but can't the Captain just put them in the form of a question once in a while instead of suggesting the answer?

Mr. LANE. If you are going to lead your witness, why don't you take him by the right hand?

Commr. PATTERSON. I think that it would be better not to ask the leading questions.

By Capt. DAVIS:

Q. Do you care to state your opinion, Mr. Taylor, as to whether in this particular case the situation is such that a District fare is justified?

A. It seems to me that the District fare is justified in this particular case, both from a cost and profit standpoint and the standpoint of logic as to the location and the proximity of these buildings to the District line, wherever it may be located.

557

Q. Now, Mr. Taylor, yesterday, Mr. Kosh introduced Exhibits 85 and 86 which concerned the Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company, respectively.

Mr. QUIRK. Mr. Commissioner, those exhibits were not introduced, they were offered.

Capt. DAVIS. I beg your pardon.

Mr. QUIRK. They were offered but they are not in evidence yet.

By Capt. DAVIS:

Q. Were you present during Mr. Kosh's testimony concerning those exhibits?

A. I was present all day yesterday; yes, sir.

Q. Now, do you recall the testimony that was given concerning the salaries paid by companies of comparable size which are set forth on page 9 of each of those exhibits?

A. I have copies of the exhibits, sir.

Q. From your knowledge of the——

Col. BARRON. He has been given copies of the exhibits, now let him testify.

By Capt. DAVIS:

Q. Will you refresh your recollection of yesterday's testimony now by referring to those two pages, Mr. Taylor?

Mr. QUIRK. What exhibit are you talking about now?

Capt. DAVIS. 85 and 86, page 9 of each one.

558 Mr. QUIRK. Now, Mr. Commissioner, we are going about this in a rather unusual way. The other witness offered these exhibits, the ruling on them is all to be taken care of later. They deal with the over-all picture.

Now, this witness is taking exhibits that are not within the record yet as evidence and he is going to testify about it.

Capt. DAVIS. I am not asking that they be considered evidence now.

Mr. QUIRK. If you want——

Capt. DAVIS. I want to tie it in with the other offer of proof.

By Capt. DAVIS:

Q. Now, Mr. Taylor, from your knowledge of the transportation business, do you have an opinion as to what a reasonable level of salaries for bus companies of the size of these respondents is?

Mr. QUIRK. I object; incompetent, irrelevant, and immaterial.

Mr. HILL. And the witness has not shown that he is qualified as an economist to speak on such subjects.

Commr. PATTERSON. Let him answer giving his opinion.

The WITNESS. I had rather not answer it, sir, if it is agreeable with you.

Commr. PATTERSON. Your company is not included in here.

Mr. QUIRK. What did you say, Mr. Taylor?

559 The WITNESS. I do not mind testifying to what the salaries of our own general officers are, sir, but I would rather not express an opinion on the point that I was asked.

Capt. DAVIS. Let me withdraw the question and ask you this one:

By Capt. DAVIS:

Q. From your knowledge of the transportation business, can you tell us what the general level of salaries is in the ordinary case for companies of the size of these respondents?

Mr. WHITTLESEY. Well, that is the same question.

Commr. PATTERSON. Do they have a general level?

Exam. MATTINGLY. Can you answer the question? That is the main thing.

Capt. DAVIS. The question is whether he has an opinion on it.

The WITNESS. I have no fixed opinion on the subject, sir. This exhibit that has been put in or offered, whichever it i, shows the figures for various companies, and——

Commr. PATTERSON. Well, you have no opinion with respect to that?

Exam. MATTINGLY. That you care to express.

The WITNESS. No, sir; I had rather not answer the question.

Col. BARRON. That is all right. I think we ought to withdraw it. He is not in position and we do not want
560 to ask him.

By Capt. DAVIS:

Q. And would you care to express any opinion as to the salaries in terms of percentage of revenue?

A. I do not have any general—I haven't any facts to go on in detail, sir. I will be glad to tell you what it amounts to in percentage of revenue in our particular company's case.

Q. I was not interested in your particular company. You have other companies there.

A. I do know about this one. The others, you may say, are hearsay.

Mr. WHITTLESEY. You are buying labor on a stringent market, aren't you, today?

The WITNESS. I beg your pardon?

Mr. WHITTLESEY. I say, you are buying labor on a stringent market?

The WITNESS. You mean we have to pay high wages?

Mr. WHITTLESEY. Yes, sir.

Commr. PATTERSON. You mean for bus drivers?

Mr. WHITTLESEY. Yes, sir.

The WITNESS. Well, I have not noticed that the officers' salaries have kept pace with the concessions to our workers, in our particular case.

Commr. PATTERSON. Most of them got above $25,000 before the war, didn't they?

561 The WITNESS. Well—it runs about 1½ percent of our gross revenue, a little less than 1½ percent of our gross revenue.

By Capt. DAVIS:

Q. Is that fairly representative?

A. I have not made any detailed study of that.

Q. You do not have any difficulty operating your busses, though, do you?

A. This is a matter of opinion, Captain.

Mr. QUIRK. Off the record. I wasn't listening.

Exam. MATTINGLY. Off the record.

(Discussion off the record.)

Mr. QUIRK. I would like to get on the record now that I understand his answer.

Well, I will come back to that.

Exam. MATTINGLY. All right. Back on the record.

Mr. QUIRK. Do you mind the interruption?

Col. BARRON. No. I think we are finished with the witness.

Capt. DAVIS. We are through.

Commr. PATTERSON. All right, if there is no more——

Mr. PRETTYMAN. I have a few questions, if the Commissioner please.

Commr. PATTERSON. Proceed.

Re-cross-examination by Mr. Prettyman:

562 Q. Mr. Taylor, I want to come back to that per bus mile computation.

Take any example, it doesn't make any difference. Let us take a distance of 3½ miles.

Now, you figure, you say, a cent and a half per passenger bus mile.

A. Passenger mile?

Q. Per passenger; yes.

A. Per passenger mile?

Q. Per passenger mile.

A. Yes.

Q. Now, then, if that bus run is 3½ miles and 3½ miles because, in figuring your passenger miles, you figured the fare out and then figured the fare back; is that correct?

A. No.

Q. I am very anxious to get very clear on the record.

A. Could I do this? Could—

Q. Yes.

A. Could I give you a copy of the computation.

Q. Yes. All I want to get clear is this, Mr. Taylor, just suppose you had a 2-mile run at a cent and a half per passenger mile, that would be 3 cents.

A. Three cents per passenger.

Q. Three cents per passenger, that is right. Now, the bus goes out two miles and it comes back two miles, which is three cents going out and three cents coming back, the passenger mile is a cent and a half; is that correct?

563 A. If you hauled anybody back.

Q. I see. If you hauled the same number of people back.

A. If you hauled the same number of people back you would get the cent and a half per mile each direction; that is right.

Q. Now, suppose that you did not haul anybody back?

A. Then you would add your revenue in one direction, plus zero in the other direction, and divide that by your total mileage.

Q. That is right. Then the passenger mile would be three-quarters of a cent in the case I have given you. Right?

A. No; if you don't have any passengers, there couldn't be any passenger miles.

Q. The bus goes out with a passenger.

A. Yes.

Q. Three cents, and goes two miles. The bus comes back without any passengers. You would have six cents and the bus has been four miles, you have one passenger. Now, the passenger bus mile in that instance would be three-quarters of a cent, wouldn't it?

A. No. There is no such thing as a passenger bus mile. You either have a bus mile or a passenger mile.

Q. Or a passenger mile?

A. But we can't have a passenger bus mile; I never heard of one.

564 Q. Well, let's talk about a passenger mile, you are an expert for the War Department, your cent and a half is a passenger mile?

A. Cent and a half per passenger mile.

Q. Now, I ask you a very simple question.

A. All right.

Q. You take a passenger on that run for two miles out at a cent and a half, he pays you three cents. Right?

A. That is right.

Q. Now, the bus comes back without any passengers in it.

A. That is right.

Q. What is your passenger mile, then, on the round trip?

A. Well, you are getting zero per passenger mile in one direction you are getting per passenger, and three cents per passenger in the other direction.

Q. Cent and a half, three cents; what is the answer to my question? Just give me the answer to my question.

A. What is your question?

Q. My question is: A passenger is on—a bus is on a two-mile run at a cent and a half per mile, which is 3 cents. The bus comes back without any passengers, so that at the end you have had revenue 3 cents, passengers 1, mile run 4 miles. Now, what is the passenger mile revenue?

A. The passenger revenue is 3 cents.

Q. No, I didn't ask you that, Mr. Taylor.

A. Excuse me, sir, I thought you did.

565 Q. The revenue per mile.

A. Revenue per mile?

Capt. DAVIS. The revenue per passenger mile, do you mean?

Commr. PATTERSON. Yes, the question he is asking is, what would the revenue per passenger mile be with respect to that particular operation.

The WITNESS. Well, the revenue per passenger mile on the round trip. I don't see how you—

What is troubling me, sir, is that I do not see how you can consider a passenger mile when there is nobody on the bus.

By Mr. PRETTYMAN:

Q. I know, but considering the whole movement from the point as to which it started until the bus got back to where it started, you can answer that question, what would the revenue be per passenger mile if there was only one passenger going out and none coming back?

A. The way we always figure——

Commr. PATTERSON. Answer the question.

The WITNESS. The answer to the question has got to be a cent and a half, sir, because the way we always compute passenger miles is only when the passenger is in transit, and you can't take a deadhead trip and say so much per passenger mile on the deadhead trip, the way we understand the terminology.

I understand what Mr. Prettyman is trying to get at but I have never heard of it being calculated that way.

Commr. PATTERSON. Well, I know, but even though it is

566 not calculated that way, what would it be?

The WITNESS. It would be three-quarters of a cent of revenue per passenger carried for the round trip.

Commr. PATTERSON. That is right.

The WITNESS. Per passenger carried per mile operated for the round trip.

By Mr. PRETTYMAN:

Q. Well, now, over the operations, Mr. Taylor, that would be referred to, would it not, as revenue per passenger-mile and that operation of three-quarters of a cent would be the revenue per passenger mile on the round trip, wouldn't it?

A. I don't think so, I think——

Q. Let me ask you this:

A. (Continuing.) I think that your revenue per passenger-mile would refer to the revenue received divided by the miles that the passenger traveled.

Q. And your cent and a half only refers to the trip when passengers are on the bus; is that what you mean to say?

A. That is what I mean; yes, sir.

Q. So that you have not given any consideration in this case to the fact that the Capital Transit Company has no passengers coming back from the Pentagon Building in the morning and none going out in the afternoon?

A. Oh, I have, sir.

Q. Where do you get the cent and a half that you have
567 used all over the country? You have talked all during your testimony of counterflow, counter traffic over in Virginia. It is different where there is counterflow traffic. I want to get at the condition where there is no counterflow traffic.

A. Well, may I explain?

Q. Certainly.

A. We took the total passengers carried by Capital Transit on Routes Q–2 and R–2, and totaled them up, which gave us 18,515 passengers.

EXAM. MATTINGLY. Per what, per day?

The WITNESS. This was per day; yes, sir.

Mr. PRETTYMAN. Right.

The WITNESS. Now, if you took the average—first of all, it is zero today on a 5-cent fare.

By Mr. PRETTYMAN:

Q. Right.

A. We multiplied the number of passengers by 5 cents, which gave us $925.75.

Q. Right.

A. Total income to Capital Transit charging 5 cents per passenger.

Q. Right.

A. Then we took your total miles operated which was 2,000.3 miles, and we divided your revenue by the miles, and that brings us out 46 and a fraction cents per bus-mile.

Q. Yes, I know, but we are taking a cent and a half a mile.

568 Exam. MATTINGLY. Wait a minute; let him finish his explanation.

Mr. PRETTYMAN. Oh, all right.

The WITNESS. Now, that mileage includes round-trip mileage because whether a bus has any passengers on it or not, if it is operating on Q–2 or R–2 that mileage is included. Now, when you get down to the point of a cent and a half per passenger mile, you have approximately, an approximate distance of 3½ miles over R–2. You multiply that by a cent and a half which gives you an average, a rate for R–2 of 4.25 cents, so instead of——

By Mr. PRETTYMAN:

Q. 3½ times a cent and a half.

A. One and a half cents by three and a half miles.

Mr. HILL. You mean a cent and a quarter.

The WITNESS. I mean a cent and a quarter. Wait a minute, now. What we took was a cent and a quarter. You take a cent and a quarter, and your average distance is not exactly 3½ miles because it is 3.6 over Q–2 Bridge but for quick calculation if you consider—4.49, approximately.

By Mr. PRETTYMAN:

Q. Give me that, at a cent and a half, how much is it at a cent and a half?

A. I didn't use that in our computation.

Q. Well, that is the question.

A. If you take—now may I finish this explanation, because it is awfully hard for me to jump around; I am doing my best.

569 Q. I beg your pardon.

A. If you take 4.39 and you use it instead of 5 cents for revenue, then you come out with your 40 and a fraction cents per bus mile instead of 46 and a fraction per bus mile.

Q. Is that the end of that?

A. Yes, sir.

Q. Now, then, suppose we use a cent and a half.

A. 1½ times 3½ gives you 5¼.

Q. Now, Mr. Taylor, when you testified here yesterday that to your knowledge companies could operate at a cent and a quarter per passenger mile profitably, did you consider that that passenger mile——

A. Well, I didn't talk about all types of operation, please understand that.

Q. Well, you said you knew of a lot that were operating at a profit of a cent and a half.

A. In service to Army installations.

Q. In service to Army installations. When you computed the cent and a quarter per passenger mile, did you include places where there was no counter flow of passengers, no return of passengers?

A. One particular case which was under observation was the Capital Transit Q–2 and R–2 line with counter flow traffic.

Q. And it was your estimation that the Capital Transit Company was operating at a profit at the present pay?

570 A. I feel so, sir. It would seem to me, as I testified, that at 46 and a fraction cents per bus mile that it was judgment that Capital Transit was making a profit on the operation; yes, sir.

Q. Now, let's go back to my question, Mr. Taylor, and get an answer and then we will get off on another track.

You testified yesterday that, to your knowledge and in your opinion, there were operations over the country at Army installations profitable at a cent and a quarter per passenger mile.

Did any of those instances which you had in mind include cases where there was no counter flow of traffic?

A. I do not know of any operation where you do not pick up some counter flow of traffic. I believe you even picked up a little on your operation to the Pentagon Building now.

Q. Well, maybe two or three custodial employees going back but you know, of course, that it is infinitesimal, don't you?

A. It is very small.

Q. All right. Now, let's come back and answer my question.

A. The answer is I do not know of anywhere there is no counter flow traffic.

Q. That is right. Now, then, was that your opinion, then, you say these operations were profitable at a cent and a quarter, you mean operations where the concern got a cent and a quarter per passenger mile going out at a cent and a quarter

571 per passenger mile coming back.

A. Yes; from those who were coming back.

Q. Yes.

A. That is correct.

Q. Now, in your testimony yesterday, you referred to a situation in Seattle, I believe, the operation in Seattle to whatever Army installation, that it was how many miles from the City of Seattle?

A. I said that I was in Seattle on a transportation problem there.

Q. On an installation outside of the City of Seattle to which there is rush hour service.

A. As I recall it, the Boeing plant there is within the limits of the City of Seattle, at least one that I was concerned with was within the City of Seattle.

Commr. PATTERSON. Aren't there about three or four Boeing plants there?

The WITNESS. There were several there, but I was concerned with only one of the plants on this particular trip and also with the equipment situation in Seattle, because of the fact of Commissioners had been here on the question of equipment, and for that reason we made a trip out there to look into the situation, the general situation in Seattle, as well as the particular problem at this Boeing plant.

By Mr. PRETTYMAN:

572 Q. In San Francisco, is the Army installation outside the City limits of San Francisco?

A. The Presidio, I believe, is within the city limits. Of course, there are numerous Army installations all at varying distances from San Francisco, out around the city.

Q. Well, did you go out there on a particular transportation problem from the San Francisco city line?

A. I wasn't there on the problem of any specific installation in San Francisco. It was mainly a question of equipment.

Q. Now, you mentioned Los Angeles, the Army installations outside the city limits of Los Angeles.

A. Well, you have in Los Angeles, that is a pretty spread out place and there are many airplane plants there. You have the Lockheed-Vega plants that are a long way out from the center of Los Angeles.

Q. Well, I do not know anything about Los Angeles, but does the metropolitan fare for urban transportation extend to the city limits in the case of Los Angeles?

A. That is the city fare.

Q. Yes. Does the central, main city fare, transportation fare extend over the whole political boundaries of Los Angeles?

A. I do not know exactly where the fare boundaries are, in detail, in the city of Los Angeles. I know that the principle method of regulating transportation in Los Angeles was a deal between the Los Angeles Railways and the Lockheed-Vega Company where the Lockheed-Vega Company rented the

573 busses at so much per bus mile and charged a fare to the people working in their plants, but the bus company rendered the service from the Lockheed-Vega plant from various rail heads in the city of Los Angeles at a certain stipulated sum per bus mile.

Q. Now, you referred, Mr. Taylor, to New Orleans, yesterday, and I believe you described that situation yesterday, the one that you had reference to?

A. Yes, sir.

Q. Now, you referred just a little while ago to Boston. Is not the Boston Transportation System subsidized?

A. It is operated by a Transit Commission, Public Utilities, I believe.

Q. Trustees, you call them.

A. I believe it is a state body set up by the State that operates it.

Q. And the deficit is paid out of tax money, isn't it?

A. I do not know exactly what their arrangement is for meeting the deficit. I do not suppose that they have one right now, I am not sure.

Q. You referred to the Chevy Chase ticket at 3 cents over in Maryland. You have to bind them in a book.

A. I believe so, although I do not recall the exact practice.

Q. And the zone is a mile and a half?

A. I do not know.

Q. You do not know that?

574 A. I did know, but I have forgotten. I just happened to remember that there was a 3-cent ticket out there.

Q. Now, you said something about depreciation of 2 cents a mile, bus mile; is that your statement?

A. That is right, though that varies, of course, with different companies. In our particular case, our depreciation is running 2 cents, approximately. I notice that the Virginia companies here had approximately two cents for depreciation. It is a figure which is not too far out under average conditions, although there are special operations where the depreciation might be higher.

If you took a $10,000 bus and depreciated it over 500,000 miles, which is the reasonable useful life of that bus, you come out with approximately a 2-cent depreciation rate.

Q. How many years would it take you to run the bus 500,000 miles?

A. It takes us about 10 years to run a bus 500,000 miles; about that, we operate approximately 50,000 miles per bus per year.

Q. That is your experience?

A. That is my particular experience; yes, sir.

Q. Your particular company?

A. Yes, sir.

Q. And of course, applies to your operation, the number of miles you can run the bus per day, of course?

575 A. Yes; and I have noticed the reports of a number of other companies that they run pretty close to that.

Q. In a similar operation?

A. In a similar operation. Now, I mean, generally, and I would like to make it clear that you might not be able to justify a different depreciation rate.

Q. You referred to the percentage of salaries paid to officers. Now, is that for Capital Transit, it would interest me to know; and also in connection with your testimony yesterday, I think you testified about your graduation, that you had come in to the company at some very minor position and then came up to be a conductor on the streetcar, and then you worked your way up through.

A. I worked for two years in the shops and on the cars of our company before I ever went into the office.

Q. Well, your family owns the company, doesn't it, Mr. Taylor?

A. My family owns the company: yes, sir.

Q. And how many of the general officers——

A. Owns the majority of the stock of the company.

Q. Owns a majority of the stock?

A. Yes, sir.

Q. And how many of your general officers are members of the family?

A. One.

Q. Just you?

576 A. Yes, sir.

Q. Do you know where the taxi fare zone break is on the way to the Pentagon Building?

A. No; I do not.

Q. Do you know what the taxicab fare is to the Pentagon Building from downtown Washington?

Col. BARRON. Wholley irrelevant and immaterial.

Mr. WHITTLESEY. It is public transportation.

The WITNESS. I know that when I ride they charge me 90 cents in my own personal case.

Commr. PATTERSON. He says they charge him 90 cents, but he doesn't know what it is.

By Mr. PRETTYMAN:

Q. How many zones are there?

Col. BARRON. I object to all this line of questioning.

Commr. PATTERSON. I do not think it is material. If you know how many zones you may answer; if you don't, say so.

Col. BARRON. No use of killing time on this.

The WITNESS. I do not know exactly, sir. I know that—I notice that there is a zone map on the back of the seat of the taxi, but I don't recall whether it is five or six different zones, they have got listed up there.

Mr. PRETTYMAN. I do not believe I have any other questions.

Commr. PATTERSON. Any more questions of this witness? (No response.)

Commr. PATTERSON: You are excused.

577 Mr. HILL. Let me ask just something for information.

Col. BARRON. I understand that the cross-examination is completed and he can go about his business now.

Commr. PATTERSON. Yes; so far as this witness is concerned, he is not to be held for cross-examination.

Col. BARRON. He has a business and this is a matter of courtesy he is down here, to us.

Mr. HILL. Mr. Taylor, when were you first called in as a consultant particularly in relation to this case?

The WITNESS. I do not recall, sir, but I think that Major Ristroph can supply that from his records, because I came down first at the request of his office on this case.

By Mr. HILL:

Q. Well, I asked you that question because when you were questioned as to whether you had advised Colonel Barron before he filed his petition for subpoena duces tecum or for an order requiring the production of certain evidence, you replied that you or intimated, as I understood it, that you were not then concerned with this inquiry.

A. No; that is not exactly the fact.

Q. Perhaps I misunderstood you.

A. I said that I did not know before Colonel Barron requested the information what information he was requesting, but I had been down, to the best of my knowledge, about five or six weeks ago, to confer with Major Ristroph on this case. Then I

578 came down later and I think I can tell you when that was.

Q. Well, that is close enough for my purpose. I want to be sure that I knew when you came into it.

Now, these investigations in these other cities which you mentioned were made for the purpose of making a comparison with the conditions in this case?

A. No, sir.

Q. None of them?

A. No, sir.

Q. You did not have this case in mind in any way when you made the investigation in the other cities, Los Angeles, San Francisco, Seattle, New Orleans?

A. No; those things were entirely unrelated and the only investigation that I have made since this came up—this case was contemplated—was my investigation at Rome, New York.

Col. BARRON. That had no direct relationship.

The WITNESS. Had no bearing on this case, but did come up while this case was in line.

Commr. PATTERSON. You are excused.

The WITNESS. Thank you, sir.

Mr. WHITTLESEY. Oh, I have not finished though, Mr. Commissioner.

Commr. PATTERSON. I thought you had completed.

Mr. WHITTLESEY. Oh, no, sir; I am just starting.

By Mr. WHITTLESEY:

579 Q. You spoke of your investigation in Rome, New York, Mr. Taylor, and I think you mentioned that the contract agreement under which busses were operated there is at 35 cents a bus mile; is that correct?

A. That is correct.

Q. Is that 35 cents a bus mile in both directions?

A. That is 35 cents per mile for the bus from the time it leaves Utica until it gets back to Utica after visiting the Army Air Depot.

Q. Whether it is loaded or empty?

A. That is correct.

Q. If the Commission lacks jurisdiction in this case to prescribe joint fares between the Capital Transit Company and the Virginia companies, is it your idea that the fare from the terminal of the Virginia companies to the Pentagon should be made on the basis of one-and-a-quarter-cent per mile?

A. Yes.

Capt. DAVIS. If the Commissioner please, that is a purely hypothetical question.

Commr. PATTERSON. Well, he has been answering many hypothetical questions for two days.

Mr. HILL. We have a hypothetical witness on the stand, too.

Commr. PATTERSON. Well, let him answer.

By Mr. WHITTLESEY:

Q. You answered "yes" did you not?

A. Did you say a cent-and-a-quarter passenger mile?

580 Q. Yes.

A. Yes.

Q. Would you follow that in the different installations from the terminals of the Virginia companies?

A. Either do that or average it out and strike an average, one or the other, it would reach the same result.

Q. Now, you spoke of the services performed by two Greyhound lines, I do not recall which they were. What service was it that you were comparing in that case?

A. All the Greyhound tariffs in the northeastern section of the United States based on a cent-and-a-half bus mile?

Q. Yes.

A. Southern Greyhound Lines have their rates all based on a cent-and-a-quarter per bus mile.

Col. BARRON. Passenger mile.

The WITNESS. That is per passenger mile, in both cases.

By Mr. WHITTLESEY:

Q. Now, the Greyhound operations are essentially long haul over the routes operated, are they not?

A. They have long haul and short haul; they have a great variety of operations.

Q. Well, now, aren't they?

A. Well, the major portion of their business is long haul; yes, sir.

Q. Now, Mr. Taylor, will you please give me the reference to the tariffs in which the fares are made on the basis of a
581 cent-and-a-quarter by the Southern Greyhound Lines.

A. Well, those tariffs are on file with the Commission here. I do not have them.

However, we are Greyhound agents for all the Greyhound companies in the Philadelphia area, outside of Philadelphia we sell a great deal of Greyhound transportation every year, and I do happen to be familiar with Greyhound rates, although I did not bring the Greyhound tariff book down with me. We have it on file at our office.

Q. And it is your testimony that the rates in the south via the Greyhound System are a cent-and-a-quarter a passenger per mile?

A. That is correct.

Q. You are positive, you are not confused on that now, between a 1-cent-and-a-quarter and a cent-and-a-half?

A. The cent-and-a-half in the north on the Greyhound lines that operate in the north, and like the difference in rail fares, there is the differential in bus fares between the north and the south.

Q. Now, will you pick me out a Greyhound operation which, in its essence, is like the operation of the Capital Transit Company, let us say, from Chevy Chase Circle to the downtown area of Washington, and then across to the Pentagon. Where do you have such a service?

A. I do not know of any similar service; the Greyhound
582 has divested itself of both of their local operations, in fact, the Main Line Bus Company up in Philadelphia which they formerly owned and operated, we bought from them and there they had a local operation along the main line.

Q. Do your know of any other? You are agents for Greyhound.

A. I do not know of any other strictly local operation.

Q. Mass transportation, you do not know of any?

A. No.

Q. Yes. Now, what study did you make to determine what would be the average length of the zone for the companies operating in urban areas throughout the United States?

I understood you to say that the exhibit which went in here, I do not recall the number, was not representative of the entire United States. Now——

A. I know that those rates are much higher.

Q. I am not asking about rates, I am asking you about length of zone. You said that the lengths of the zone——

A. I am not sure whether——

Q. Was shown on that exhibit, were bloated. Now——

A. They were shrunk, they were too small.

Q. They were too small?

A. Yes.

Q. Now, what studies did you make as a basis for that statement?

A. Well, I know that.

583 Q. Wait a minute. I didn't ask you what you knew, I asked what study you made, that is a specific question.

A. I did not make any study and I know from my general knowledge.

Q. You say that is general knowledge?

A. Yes, sir.

Q. Over the whole United States?

A. Accumulated over a period of years.

Q. Yes, sir. Have you given any thought at all to the operation, to the relation of the, or the location of the District Line in relation to Maryland? Is it your idea because some day the District line might be moved north into Maryland, that the District fares should now be extended into that part of Chevy Chase lying north of the circle?

A. I have not given that subject any thought, sir.

Q. Do you consider the physical operating conditions around the Pentagon comparable to most operations encountered by urban companies in the transportation business?

A. Well, the Pentagon operation is quite different from most operations.

Q. Very complicated physical lay-out there, is there not?

A. Lay out of what?

Q. Of the roads and the bridges to the Pentagon.

A. Well, there are grade separations which avoid any accident hazard or impediment to traffic so that you can make very

584 good time getting in and out of there.

Q. Do you consider that as a simple physical lay-out that is the only question I asked you, or don't you?

A. If you mean that it requires an extra distance to go through these clover leaves getting in, yes, it requires considerable extra distance going through those clover leaves to get into the Pentagon Building.

Q. Well, that is no answer but I guess it is the best I will get.

A. Well, I am trying to answer your question.

Q. Isn't that a singularly involved system of approaches in reaching the Pentagon from Washington or traveling in the reverse direction, almost have to send——

Mr. HILL. Almost have to send out St. Bernard dogs to rescue the bus drivers, don't they?

The WITNESS. Well, I understand after they have made the trips for a day or two, they are pretty well on to them.

By Mr. WHITTLESEY:

Q. You do not regard that as complicated?

A. What you would call complicated is a little hard to define. It is confusing to anybody that has not been in there.

Q. In arriving at a figure of one and a quarter cents per passenger mile, did you give any consideration to such circumstances as a possibility of a sharp decrease in traffic by reason of the termination of the gasoline rationing?

A. I had not considered any sharp decrease in volume of
585 travel likely from a termination of gasoline rationing.

Q. Well, did you give any consideration to the possibility of such sharp decrease in the number of patrons?

A. No, my calculations were based on today's conditions.

Q. And on the assumption that those conditions will continue throughout the life of this proceeding and throughout the life of this fare the Commission might prescribe?

A. That these conditions would obtain during the period that these buildings will be used in their present manner by the War Department. In other words, I did not attempt to forecast any falling off in traffic until the war is over.

Q. Until the war is over.

A. At the time the war is over these buildings may be used for some other purpose, I do not know.

Q. By the way, there is a tremendous parking area at the Pentagon, is there not, for privately owned cars?

A. There are several parking areas.

Q. Yes. How many thousands of cars could be accommodated there?

A. I do not recall. I believe that Major Ristroph can testify accurately as to that point.

Q. Is that not being used to capacity, or are those lots being used to capacity?

A. I do not know. Major Ristroph is familiar with those lots and the operations of them, and if you do not mind you
586 can ask him.

Q. Well, you do not know then, whether the Pentagon was built on the assumption that a very good part of the traffic would come in privately owned cars, and that that condition does not now obtain?

Col. BARRON. I suggest we supply competent witnesses on these points.

Commr. PATTERSON. If he doesn't know that he may say so.

Mr. WHITTLESEY. Mr. Commissioner, he has based his calculations on certain conditions. Now, I just want to ascertain which conditions he does not know about.

Commr. PATTERSON. That does not keep him from saying that he does not know if he does not know.

Col. BARRON. We have witnesses that can testify on that.

By Mr. WHITTLESEY:

Q. Well, then, Mr. Taylor, did you make any effort to base your fares on the financial ability of your patrons to pay——

A. (No response.)

Q. Have you ever investigated the individual incomes of your patrons to determine what they might be able to afford to pay you?

A. Never made any detailed investigation of it. However, in answer to your first question, people with large families, of a good many children, have a much greater transportation problem
587 than small families, as a rule, so we put in a half fare for school children and for children.

Q. Well, that is done almost everywhere, isn't it?

A. Well, some places do and some places do not. They have a 3 cent school ticket in Seattle.

Q. And those rates are available to the children of the poor and the rich alike, are they not?

A. Any school child, yes; that is right.

Q. I want to know if your basic fares up there are made in the light of the earnings of your patrons, that is all.

A. No, we don't gauge our rate making by the individual earnings, of course not.

Q. Have you made any effort to determine what proportion of the income of your patrons is being put into war bonds?

A. No.

Col. BARRON. That is getting pretty far afield. I do not know just what——

Mr. WHITTLESEY. We didn't start this, you started this.

Col. BARRON. I think the Commissioner held that his company is not on trial here.

Mr. WHITTLESEY. That is all right, he is an experienced authority.

Col. BARRON. Sure he is.

Mr. WHITTLESEY. All right. Then I want his experience.

Col. BARRON. All right.

By Mr. WHITTLESEY:

588 Q. Have you made any effort to determine what percentage of income of your patrons may go into old age pensions, we will say.

A. We have made no study on that score, sir.

Q. You do not know what percent of the income of your patrons who work for the Government is going into a retirement fund?

A. Which patron is that?

Q. All the patrons who ride on your line.

A. Who ride on our line?

Q. Yes.

A. We have made no such study, no study along those lines at all, sir.

Q. Why, didn't the financial—don't you consider that of great value in determining the level of fares that you should put in up there?

A. The question has never come up and it never occurred to me.

Q. It just never occurred to you?

A. Never occurred to me.

Q. Do you know of any other operator of a bus line to whom that question has ever occurred?

A. Bus operators, as a rule, are interested in collecting as much revenue as possible from the class of patrons served, and I have never known them to institute any proceedings to look into this, sir.

589 Col. BARRON. They are not primarily concerned with that, are they?

By Mr. WHITTLESEY:

Q. I take it you have never sent a questionnaire to your patrons to determine any of the elements that I have just asked you about?

A. No, we have never sent a questionnaire out to any of our patrons.

Mr. WHITTLESEY. That is all. Thank you.

Mr. QUIRK. I have one question.

By Mr. QUIRK:

Q. Now, Mr. Taylor, I take it you are in touch with this transportation problem as a part of your work, are you not?

A. (No response.)

Q. The transportation to and from the Pentagon Building is part of your job, isn't it? You know about it?

A. Only in connection with this particular proceeding.

Q. Oh.

A. Now, it was an assignment that I had for several months while I was down here last summer but then I went back to Philadelphia and I only come down when I am sent for.

Q. All right. Do you know whether or not since May of this year there has been a falling off in the bus travel to and from the Pentagon Building?

A. I understand there has been some, yes, sir.

Q. Substantial—quite substantial?

590 A. I do not know what the figures are right at the moment compared to May, but up until the time of the preparation of these exhibits, there had been a falling off.

Q. Hasn't there—through the efforts of the War Department, pool stands have been established within the last, well, recent past, and sharing private cars or sharing the ride proposition has been advocated by the O. D. T. and others?

A. Well, there have been efforts in that direction for over a year and a half.

Q. Well, hasn't there been a real improvement in the recent past?

A. I understand so.

Mr. WHITTLESEY. What percent of your time is devoted to acting as consultant for the War Department?

The WITNESS. That varies a great deal.

Mr. WHITTLESEY. How much in 1942, roughly?

The WITNESS. In 1942, I spent at least half of my time.

Mr. WHITTLESEY. That is all.

Commr. PATTERSON. You are excused.

Lt. MATHEWS. Mr. Taylor, just one thing. I think that you told about this before, but I believe it became unclear when you were discussing it with Mr. Prettyman.

In making your computations of revenue for bus mile on the Capital Transit Company on the Pentagon operation, did you take into consideration the mileage of the return trip?

The WITNESS. Yes.

591 Lt. MATTHEWS. Then this figure that you used in the computation is mileage both ways?

The WITNESS. That is right.

By Mr. PRETTYMAN:

Q. Well, Mr. Taylor, you talked about the 25 passengers. I understood you to say that the bus carrying 25 passengers at a cent and a quarter would yield 31.25, you could make money; is that your testimony?

A. (No response.)

Q. You brought in 25 passengers in the bus at a cent and a quarter and you got $31.25, which was a bus mile.

A. I don't remember which figure you mean.

Mr. PRETTYMAN. Well, I do not like to take the time of this witness in cross-examination in order to ascertain the computation, but I would like very much to see the computation so that I can understand it because, frankly, I do not understand how he computed it, it is over my head, for each time I try to get a passenger mile figure you have shifted over to the bus mile.

Commr. PATTERSON. Well, I think what is confusing him partly is that the passenger mile rate as charged a passenger is not always the same as the passenger mile rate that is charged against the operation.

In other words, if you have a bus that would make two miles at 1½ cents, carries the passenger both ways, you get 1½ cents passenger revenue, while if the bus came back
592 empty, you would get three-quarters of a cent passenger revenue.

Mr. PRETTYMAN. Now, here is how he figured it as we understand it, he has taken a cent and a quarter and applied it to the time when passengers are on the bus.

Commr. PATTERSON. I think the Commission understands it.

Mr. PRETTYMAN. Well, that is all right. Then there is no reason why I should go further.

The WITNESS. Well, do you want this?

Mr. PRETTYMAN. I would love to look at it during lunch, yes.

The WITNESS. Let me have it back again.

Mr. PRETTYMAN. Sure.

Exam. MATTINGLY. I have just one question or maybe two.

I think, in response to a question I asked in regard to these estimates, that you were making, of a cent and a quarter or a cent and a half, or whatever it was, should apply in connection with all the respondents that are in this proceeding, that is, not Capital Transit all the way, Capital Transit part of the way and the Virginia Bus Lines the rest of the way; is that correct?

The WITNESS. Yes, sir.

Exam. MATTINGLY. Now, I also understood you to say that an important element in arriving at that result which you obtained was whether or not there was a counter flow movement, whether the busses were used both ways or only one way.

593 I wonder if there is any inconsistency between uniform rate for all these busses when one of it does not have any counter flow traffic or practically none and the others do have counter flow traffic.

The WITNESS. Well, my point, sir, was that the cent and a half should apply generally, or a cent and a quarter should apply between the person's home to the place of work at the Pentagon Building or Gravelly Point or T-7, and the method of distributing that fare fairly between the respondent companies would be a matter of negotiation between themselves.

I brought out first that the Capital Transit Company on a cent and a quarter a bus mile that their revenue would have been over 40 cents per bus mile which would take care of their expenses.

Then in the case of the Virginia companies, being counter flow traffic, if Capital Transit Company could meet their expenses with their one way operation, then the Virginia companies should easily be able to do so because the traffic is counter flow in large part on their operations.

Exam. MATTINGLY. Well, that is just the point: If a cent and a quarter is all right for any one of those operations, why should not something else be all right for the other in view of the conditions that are involved, should not they obtain in one instance and not in another?

The WITNESS. Well, if a cent and a quarter per bus mile
594 will take care of the thing where there is no counter flow movement, it should take care of it when there is a counter flow movement.

Exam. MATTINGLY. Shouldn't it overlap somewhat?

The WITNESS. It should.

Exam. MATTINGLY. Well, that is what I am trying to find out from you.

The WITNESS. Yes, sir; but what we are trying to show is that at a cent and a quarter a bus mile that the District fare would produce a cent and a quarter.

Commr. PATTERSON. A cent and a quarter a passenger mile.

The WITNESS. A cent and a quarter; yes, sir; a cent and a quarter per passenger mile would be, therefore, the District fare as computed on the Army and Navy exhibits.

Now, we are not concerned with the divisions between the companies of the revenue.

Commr. PATTERSON. No, but you are concerned with the cost to the passenger.

The WITNESS. With the cost to the passenger.

Commr. PATTERSON. Well, now, do you think the rate paid by the passengers should be grouped so that each passenger would pay a cent and a quarter a mile?

The WITNESS. No, sir; I think a rate should be established that would produce that result on the average.

Commr. PATTERSON. But how would you arrive at a rate
595 for each individual passenger, would you group the passengers by territories, by groupings?

The WITNESS. We did that, and computed the average right, sir. And of course, one fare should apply.

Commr. PATTERSON. You won't have all in one group. Suppose the Commission should find that the passenger should pay a cent and a quarter a mile. I do not know that they would, but assuming that something of that sort should be found, then do you think it would be satisfactory to group particular passengers and charge each group a cent and a quarter a mile?

The WITNESS. That would not be practicable, sir.

Commr. PATTERSON. Well, there are a great many levels.

The WITNESS. I do not think it would be practical, it is usual in metropolitan area to charge people the same rates.

Commr. PATTERSON. Regardless of how big the metropolitan area is?

The WITNESS. Yes; regardless of whether they ride three miles or four miles or five miles.

Commr. PATTERSON. Well, would you——

The WITNESS. Now, in London, I understand that they have zones.

Mr. HILL. First we moved the Potomac and now we are across the ocean.

The WITNESS. But we have never gone into that, any of those questions, as far as I know.

596 Commr. PATTERSON. Well, of course, the fares perhaps should either be on a mileage basis or on a zone basis, but you can't pick out the scheme you want to use exactly.

The WITNESS. Well, we intended to show by this testimony or endeavored to show by this testimony that the District fare between the homes and the places of work would produce a revenue. would produce the equivalent of a cent and a half per passenger mile.

Exam. MATTINGLY. Your position is that that rate should be uniform from all the points within the District, as I understand you?

The WITNESS. I think the rate should be uniform whatever it may be from points within the District to these buildings, yes, sir.

Exam. MATTINGLY. And it is also your position, as I have understood it, that regardless of how the passenger travels, whether he goes Capital Transit all the way with their shuttle service, or whether he comes down here in front of the Post Office and goes

the rest of the way on the Virginia Bus Lines, which do have some degree of counter flow traffic, that the rate should be just the same?

The WITNESS. I think that the charge to the passenger should be the same. The division between the companies should allow for all the different elements that they would bring up between themselves in bargaining for position.

597 Exam. MATTINGLY. That is all.

Commr. PATTERSON. We will recess until two o'clock.

Exam. MATTINGLY. Are you through with Mr. Taylor?

Does anybody else have any questions?

(No response.)

Exam. MATTINGLY. Well, then, he is excused.

(Witness excused.)

Commr. PATTERSON. We will recess until two o'clock.

(Whereupon, at 12:35 p. m., adjourned until 2:00 p. m.)

AFTERNOON SESSION—2:00 P. M.

Commr. PATTERSON. Do you have any more witnesses, Colonel Barron?

Col. BARRON. Yes, sir; quite a number. There is some slight explanation of the figures in this Order No. 1713 of August 29, 1938, of the Public Utilities Commission of the District of Columbia, about which there was some dispute yesterday.

We had that figure examined and would like to clarify that while Mr. Kosh is here.

Incidentally, I would like to offer the copies as the next exhibit of that order, we have several of them here.

Mr. PRETTYMAN. I make the same objection.

Exam. MATTINGLY. No. 88.

598 (Army and Navy Exhibit 88, Witness Kosh, marked for identification.)

D. A. KOSH resumed the stand and testified further as follows:

Direct examination by Col. BARRON:

Q. The order you were testifying to regarding the 1938 valuation figures of the several properties, what do you have before you there, Mr. Kosh?

A. I have this order which is introduced into the record. I am looking at page 17 of it.

Yesterday I read a paragraph of that page in response to Mr. Prettyman's question about whether the 39 million dollar figure included only property within the District.

While reading the order I did not notice that there was an asterisk after that figure, referring to a footnote.

Mr. PRETTYMAN. What page?

The WITNESS. 17.

And the second part of that footnote reads: "includes equipment used for transportation in Maryland, for which allocation has been estimated and shown in Final Value paragraph of this order."

That was a footnote I did not read yesterday in connection with that paragraph.

By Col. BARRON:

Q. I understand that some question was raised as to whether or not the property was all in the District.

599 A. Yes, sir; that is correct.

Q. And that clarifies the testimony. That was the only purpose I had.

Mr. PRETTYMAN. Mr. Kosh, of course that means District of Columbia property that happens to be used over in Maryland and does not include Maryland property; is that correct?

The WITNESS. Well, I did not attempt to define the footnote. I just read the paragraph I had my attention called to. I had omitted the footnote and that it might be appropriate to add that footnote.

By Capt. DAVIS:

Q. Mr. Kosh, yesterday you were asked some questions regarding the selection of those bus companies for which the officers' salaries were shown; I believe this was on page 9 of Exhibit 86.

A. That is right.

Q. Since that time have you had that rechecked and prepared some additional information?

A. Yes; I have.

Q. Will you tell us what you have found since then?

A. Yes. There was some question wheth[illegible] sheet 9 of Exhibit 85, there were two questions: first, whether it included all of the companies within the $500,000 range, and then whether any of those companies were freight carriers or not.

I have had somebody check into that this morning and here are the answers to that question.

600 That list of companies, the Alexandria, Barcroft and Washington included two companies that carried freight in addition to their passengers.

That list of companies was the entire list available of August 9, at the time this investigation was made.

This morning, of course, other companies had not filed at that time. By this morning more of the companies had filed that information.

I therefore had prepared, subject to the same general directions that the original exhibit was prepared, a similar exhibit which now contains all of the companies within that half million dollar range and excludes all companies that carried any freight.

In other words, this corrected sheet covers only passenger carriers and includes all companies within that $500,000 figure.

Col. BARRON. We offer that as the next one.

Commr. PATTERSON. Suppose we mark that Exhibit 85–A.

Col. BARRON. All right, sir.

Commr. PATTERSON. And keep them together.

Mr. QUIRK. This is objected to as incompetent, irrelevant, and immaterial.

Commr. PATTERSON. Same objection and the same ruling.

(Army and Navy Exhibit 85–A, Witness Kosh, marked for identification.)

601 The WITNESS. For this company, I might also add that all the companies reported as of this morning are included in that list, subject to that $500,000, and all the companies on that Exhibit 85–A are passenger carriers, too.

Now, in connection with a similar question——

Exam. MATTINGLY. Give the reporter the original.

The WITNESS. Yes.

Col. BARRON. I offer this next one that he has revised.

The WITNESS. Before we leave that 85–A, there is just one point I would like to bring out.

If you will please turn to page 9 of the original 85, on the last line, notice there is an error of subtraction 69 less 29, that should be 36 instead of 26, and it has been corrected in the new exhibit.

That change is not very substantial and no further explanation appears to be necessary.

Now, taking up the Exhibit 86–A, the same general clarification, three freight companies are included in the original compilation.

This morning a corrected compilation was prepared and 86–A contains no freight carriers whatever, and includes every company reporting to the I. C. C. as of this morning and within that $150,000 limitation.

(Army and Navy Exhibit 86–A, Witness Kosh, marked for identification.)

602 Capt. DAVIS. Mr. Commissioner, yesterday reference was made to the monthly reports filed with this Commission by the Virginia companies which are respondents here, and I believe Your Honor suggested we refer to that more specifically.

I have copies of the blank form here which is headed, "Monthly Report of Revenue of Class I Motor Carriers," and bears the cap-

tion in the upper right hand corner, "Form approved by the Budget Bureau." This shows the name of the carrier, revenue bus miles operated, and number of passengers carried.

We understand that it is to be filed within 30 days after the close of the month, but we would like the Commission to consider these reports which should be on file for the month of July for the same companies.

Commr. PATTERSON. They will be so considered.

Col. BARRON. That is all the questions of Mr. Kosh. We are ready with another witness.

(Witness excused.)

Col. BARRON. Mr. Trueblood.

J. D. TRUEBLOOD was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Please state your name, address, and position.

A. My name is J. D. Trueblood, Evanston, Illinois; I am a civilian contract employee of the Office of the Assistant
603 Secretary of the Navy, Transportation Branch.

Q. Assigned at the present time to Washington, D. C.?

A. Yes, sir.

Q. Are you a graduate engineer?

A. I graduated at Purdue University with a degree in Engineering.

Q. What year, please?

A. 1909.

Q. Have you ever been employed by a transportation company or transportation companies?

A. I have been employed by or worked with transportation companies through practically all of my business life. I have worked for several railroads, the Union Pacific Railroad, the Missouri Pacific, the Chicago and Northwestern, and beginning in 1926 I was employed by the Yellow Truck and Coach Manufacturing Company in matters relating to local transportation.

Commr. PATTERSON. In what capacity did you work for the railroads?

The WITNESS. Engineering and in the last employment, with the Chicago and Northwestern, I was an assistant in the office of the president.

Commr. PATTERSON. What sort of engineering?

The WITNESS. Consultant engineering mostly, sir.

For the past seventeen years I have been employed as a
604 transportation engineer and also to some extent in sales work for the Yellow Truck and Coach Manufacturing Company. This employment was, as I say, partly sales work, but in a

small organization of our relative importance the work overlapped, part of the time I was a salesman and part of the time I was transportation engineer.

By Col. BARRON:

Q. You were in the operating end at times, working on the operating?

A. Yes, sir.

Q. What is your job with the Navy? What position?

A. With the Navy I have a position which is somewhat similar to what Mr. Taylor has in the Army. I am assigned to take care of certain transportation problems where they develop, a problem that needs ironing out or needs some correction in one way or another, which my experience seems to indicate that I might improve.

Q. Have you had occasion in recent years to make any surveys or examinations of operating conditions of bus companies in different cities of the country?

A. I have, during my experience with the Yellow Truck and Coach Manufacturing Company, my former employer, my work consisted of making studies, ordinarily at the request of the operating—the bus operating companies in order to assist them in working out problems of one kind or another, often matters in connection with improving their revenues, sometimes
605 in connection with their operating problems, their various problems of operating, routing, mileages, vehicles, use of vehicles, and so forth.

Q. Did you study rate structures during that period within any larger cities?

A. I have made some studies incidental to my other work in connection with those factors.

Q. Have you been employed by the Interstate Commerce Commission in valuation matters?

A. Yes, sir; I was employed by the Interstate Commerce Commission in valuation matters, railroad valuations, for a period of about three years, as I recollect.

Q. Yes.

A. This was some 30 years ago.

Q. I believe you testified that you are generally familiar with some of the local transit problems in cities or other communities.

A. That is correct.

Q. Would you say, as a matter of your expert opinion, that it is usual for a transportation company serving a community such as Washington, to so arrange its lines and so fix its rate of fare that the areas in which the major portion of the population is employed is adequately covered by transportation facilities?

A. That is correct, sir. The primary object of a trans-
606 portation, of course, is to make money and they usually arrange to provide the service where there is business.

Q. In general, is there a uniform schedule of fares from residence points within cities to the main areas of employment?

A. That is the general practice; yes, sir.

Q. Is it true that many local transportation systems extend beyond city limits into contiguous areas?

A. That is very often the case.

Q. Is this usually true where the contiguous areas to which such systems extend have developed and the population increased to provide sufficient passengers for such operations?

A. That is true and ordinarily is a condition for extending the lines that they have sufficient business to justify the extension.

Q. Is it also true that there are frequently areas within the city limits or to the limit of the franchise which are not served by the transportation system?

A. Yes, sir; that is. Almost every system, of course, has areas inside the city where they do not have to give service because there is no residence area or there is no commercial area involved.

On the other hand, there are some cases where they have extended their service outside the limits.

Q. Are the areas served usually fluid, and do they often extend with the growth of the communities?

607 A. That is the case. Ordinarily, a local transit company will provide service wherever they think there is sufficient business to justify the service. That, of course, is their object in life, to provide transportation service.

Q. It is true that in many communities that when lines are extended beyond the limits of the city or the franchise limits because of the growth of the community, the city fare is also extended to such area?

A. That is true in many cases.

Q. In areas where uniform fare is not extended, what are the factors which usually account for such non-extensions?

A. Well, there are a number of factors that enter into the problem, and as a general statement, the factors are different in every case that comes up.

But the conditions generally hinge on several factors:

First, the additional distance that is involved;

Second, the amount of traffic that is promised; and

Third, the manner in which that traffic can be handled, and

Fourth, you might have the unusual additional expense that might be incurred, and by this I mean such expenses as tolls on a toll bridge, or tolls for tunnels.

Q. Yes, sir.

A. And tolls assessed by additional municipalities entered, and possibly if the bus company operates on a State highway,
608 where they require their busses to be certificated, under State operations and at an additional expense.

I do not refer simply to the ordinary extra expenses involved in such service.

Then we have another factor which we might call public acquiescence, or the expediency of the additional fare that might be charged, and so forth, city limits, and the further factor that might be called a possible defense for it, on behalf of the company.

Q. Do you think that the factors which generally result in an additional fare for operations beyond city limits exist in the case of transportation to the Government buildings or facilities which are involved in this proceeding?

Mr. QUIRK. What is that, again?

Col. BARRON. I will repeat it.

Mr. QUIRK. Will you read it, Mr. Reporter?

(Question read.)

Mr. QUIRK. I object to that question as incompetent, irrelevant, and immaterial.

Commr. PATTERSON. He may answer the question.

The WITNESS. My answer is that with respect to the traffic between the District and the buildings across or south of the Potomac River, that these factors, taken individually or collectively, do not justify an additional fare. And I think that that is true whether one or more than one carrier is involved.

609 Q. Do you believe, then, that there are now a sufficient number of people employed in the buildings concerned for the transportation lines to be extended to the buildings as transportation lines have been similarly extended elsewhere when a community has grown?

Mr. QUIRK. Is it important to the Commission what this witness believes about that, Mr. Commissioner?

Commr. PATTERSON. I do not know how important his testimony will be, what the Commission will think it is worth.

Mr. WHITTLESEY. May I inquire whether this testimony is also under the general restriction limits?

Col. BARRON. No.

Commr. PATTERSON. No, not to this testimony; this is opinion testimony.

Mr. WHITTLESEY. All right.

The WITNESS. I would like to have the question again, please, sir.

Col. BARRON. Yes.

(Question read.)

The WITNESS. Well, the exhibits have shown, I believe, that there are approximately 40,000 people in the aggregate employed in the different locations which are concerned.

Now, there are a great many local transit operations in this country that do not serve more than 40,000 people altogether with all their system operation, so, of course, I think the service is well justified.

610

By Col. BARRON:

Q. Is it true in the particular situation here involved that the Government buildings, that is, the Pentagon Building, the Navy-Arlington Annex, and Gravelly Point, may be, in fact, considered an extension of the general area in which most of the people of the District of Columbia are employed for transportation purposes?

The WITNESS. I wish you would read that again, please.

Mr. HILL. We join in that request.

By Col. BARRON:

Q. All right. Do you believe that in the particular situation which is here involved that the Government buildings; that is, the Pentagon Building, the Navy Arlington Annex, and Gravelly Point, may be treated for transportation purposes and are in fact, an extension of the general area in which most of the people in the District are employed?

Mr. QUIRK. Mr. Commissioner, in order to avoid the necessity of objecting each time, may it be understood that I am objecting on behalf of my client to all of the opinion evidence, on the ground that it is incompetent, irrelevant, and immaterial.

Commr. PATTERSON. Let the record so show.

Mr. HILL. I join in that, Mr. Commissioner, with the further observation that it is intensely leading.

Commr. PATTERSON. Let the record show that Mr. Quirk objects to all these questions.

611

Mr. PRETTYMAN. We also join in the objection.

The WITNESS. The principal business, so far as employment is concerned, in the metropolitan District of Washington is the executive branch of the Federal government.

Because of the war it became necessary to expand the facilities of the various Government offices, and it became necessary to employ a vast number of additional employees.

These buildings across the river and their employees represent the additional effort that was required. They are just as much a part of the Federal government as if they were on this side of the river, and the extension of the area of Government employment to include those buildings over there is simply a natural extension that must be taken into consideration as a result of the war effort.

Mr. WHITTLESEY. Mr. Commissioner, may I have the answer read by the reporter?

Commr. PATTERSON. Will you read the answer back?

(Answer read.)

By Col. BARRON:

Q. You mean they are in part an extension?

A. They are; yes, sir.

Q. Is it your opinion that the four buildings here involved as extensions of the employment area; that is, the main down town area in which most of the people in the District of Columbia work, do you regard them as a part of that area, or

612 do you think they should be regarded as a part of that area for rate making purposes?

A. That is my opinion; I think they should include the entire, I should say this, that the entire District schedule of fares should apply to those locations.

Q. Do you know what the total number of Government employees in the metropolitan district of Washington is?

A. The May 1923 report of the Civil Service Commission states that the employment in metropolitan Washington in the executive branch of the Federal government is 280,288 people.

Q. Of which 40,000 would be roughly what percent?

A. 40,000 then would be roughly 15 percent.

Q. When you speak of extensions of uniform fare to areas outside the limits of a community, do you include the use of tokens or weekly passes?

A. I would, sir; I would include the whole schedule of fares.

Q. Do you think that it is feasible and reasonable where two transportation companies are involved to use the schedule of fares established for the District as in this case?

A. Well, the best answer I can give to that, sir, is that Capital Transit Company at this time has an arrangement with one bus line whereby the transfers of one are honored by the other on the payment of an additional fare, so that the plan is in effect at the present time as regards to fares on which transfers may be issued.

613 Q. Those arrangements are not uncommon, then, to your knowledge?

A. They are very common, sir.

Q. Can you speak, briefly, as a matter of information, how you think that the transportation companies might arrange for the settlement of account if transfers and passes were employed?

Mr. WHITTLESEY. I object to that.

Mr. PRETTYMAN. I object.

Commr. PATTERSON. You may answer the question.

The WITNESS. Well, as regards a cash and token fare, as I say, the Capital Transit Company has such a plan in effect now. On pass fares it is not usual to issue transfers, and in case the pass was used, it would probably be necessary to issue a special kind of pass, or it might be necessary to rely on traffic counts of the passes honored by each company, which is something that can be done.

Col. BARRON. I would like for them to just wait; they will have their turn.

Mr. HILL. When I have my turn it will be in a louder voice than this; the Bench will hear me.

(Further colloquy between counsel stricken from the record.)

Commr. PATTERSON. Proceed.

Col. BARRON. I think that is all the questions I have of
614 this witness.

Mr. PRETTYMAN. I have just a couple of questions.

Cross-examination by Mr. PRETTYMAN:

Q. I am sorry, I didn't get the witness' name.

A. Trueblood.

Q. Mr. Trueblood.

A. Trueblood; yes, sir.

Q. This transfer with another company that the Capital Transit has has reference to the transfers with the W. M. and A.?

A. Yes, sir.

Q. And when you get to the District Line you have an additional fare to go outside the district on the W. M. and A.?

A. As I understand it, sir.

Q. So that in that situation, in order to get outside of the District line, under that arrangement, you pay a District fare plus an additional fare after you cross the line?

A. That is my understanding, sir.

Q. Now, you referred or said that you knew of a number of instances throughout the country where the fare, the urban fare, the city fare extended outside of the city.

I would appreciate if you would just give us some of the instances you have in mind.

A. Well, the one that actually comes to my mind is the
615 home city of my own company, Pontiac, Michigan.

Q. What is the name of the place?

A. Pontiac, Michigan. I refer to that because that is where the company is located that I have been employed by heretofore. I believe this morning they mentioned the instance of Kansas City in which I happen to know that the Kansas City, Missouri, fares will take you to Kansas City, Kansas. You have numerous others,

there are numerous other cases where they run, it is extended over the franchise, franchise area.

Q. And could you name some others?

A. Well, I would have to——

Q. Boston and Cambridge?

A. No, sir; I am not familiar with those operations. I would have to rack my memory to find out where they all are.

Q. These are the only two that occur to you at the moment?

A. Those are the only two that occur to me right at the moment.

Q. How big is Pontiac?

A. It is about 70,000–75,000.

Q. And how far outside of the city limits does this fare run?

A. I should say in an extreme instance about a mile.

Q. Just one mile. And what is the city fare?

A. The city fare is 5 cents for cash fare and a penny for a transfer.

616 Q. One cent transfer?

A. One cent transfer, sir.

Q. And how big, geographically, is Pontiac?

A. Well, sir, I would have to do some guessing at that. I should say that probably it is four miles long and maybe three miles wide. I think that is conservative.

Q. You spoke of Kansas City. I am not familiar with that city, but isn't that built up solid between those two cities?

A. It is, sir; in most cases. The Kansas River separates t' two and is the city line.

Mr. QUIRK. The Kansas River does not separate the two.

Commr. PATTERSON. It is the Kaw River.

Mr. QUIRK. It is not separated by the river.

Commr. PATTERSON. Oh; that is right.

Mr. QUIRK. It is just a boundary line, one part of it where the streetcars go down into what they call the Bottoms. Do you want me to testify?

By Mr. PRETTYMAN:

Q. Do you now wish to say that you were mistaken when you said that the river separated the two cities?

A. Yes, sir; I was under a misapprehension, I guess, if the gentleman is right.

Q. Then your answer would be that it is built up solid between the two cities?

A. I presume so; if he is right.

617 Q. And the city service that extends over the two areas is a metropolitan service with frequent stops, every block or so, to pick up and let off service; is it?

A. It is the usual service, sir.

Q. The usual city service?

A. The same thing applies to north Kansas City, which I believe is across the Missouri River.

Mr. PRETTYMAN. Thank you very much.

By Mr. QUIRK:

Q. Mr. Trueblood, state whether you know, if you know whether a person can take a bus in Manhattan, New York, and with the fare paid over the 5th Avenue Bus, for example, will that fare carry over to New Jersey lines?

A. I can not answer you that, sir; I am not familiar with that situation.

Q. You did not examine that?

A. No, sir; I never had occasion to.

Mr. QUIRK. I think the Commission would almost take judicial notice of the fact that you can not do that.

Commr. PATTERSON. Are there any other questions?

Mr. WHITTLESEY. Yes, sir; I have got one.

By Mr. WHITTLESEY:

Q. Mr. Trueblood, I understand your testimony is to the effect that a District fare should be applied to these installations because that is included within the extension of the area of the municipal district; in other words, that it is a natural extension of
618 the Federal government operations; is that correct?

A. It is a natural expansion of the area of Federal employment due to the increase of facilities necessary because of the war.

Q. And wherever you have Federal employment en masse, you contemplate then that the same one fare should apply?

A. That is generally right; yes, sir.

Q. Now, the Gravelly point installation is approximately half way between Alexandria and Washington down town area, isn't it?

A. Well, I can't answer you that relative proportion, sir: I know about where it is.

Q. Did you make any particular examination of the distances when you made this investigation on which you base your opinion?

A. As a matter of fact, sir, I have not made a survey of this situation.

Q. Well, did you know or have you been advised that there was a torpedo plant installation south of Alexandria, and a quartermaster installation on the outskirts of Alexandria?

A. I am not familiar with that situation, sir.

Q. Well, if those were Government installations down there, under your theory, the fare then would extend that far in that direction, wouldn't it, sir?

A. I hardly think that you could consider those part of the Governmental offices of Washington.

Q. Well, do you arrive at that last conclusion by reason of
619 geographical distances?

A. Certainly.

Q. Well——

A. Not only geographical distances, but difference in the nature of the establishments.

Q. Well, would you exclude installations such as the torpedo plant from your consideration?

A. Not necessarily.

Q. In the determination of the area?

A. Not necessarily. We have a Navy Yard in Washington and I certainly think that is entitled to consideration as a Government establishment.

Q. Suppose we had a quartermaster installation at the same location instead of the Pentagon Building, would you consider that as a natural extension of this business area that you are talking about?

A. I think so; yes, sir.

Q. All right. So that it is practically a question of mileage then?

A. It is largely a question of mileage, is right, sir.

Q. Now, you have a great many Government installations of this type, office type, in Baltimore, do you not?

A. Yes, sir.

Q. Well, how do you think that those people who commute between Washington and Baltimore to their work there,
620 that work in Baltimore, would be entitled to one fare, sir?

A. Not the district fare, no, sir; they do not reside in the District.

Q. Is that conclusion based on mileage, too?

A. They do not reside in the District. What we are talking about is District fares to these buildings across the river.

Q. Well, if someone lived in Washington, close to the Pentagon Building, and rode in to Washington to work, would you consider that as a factor in this test that you used to determine whether the area should be within one zone or not?

A. I think I limited my answer to the District fares applying to the Pentagon and these other buildings.

Q. Well, and all I am doing is seeking to determine how you arrived at that conclusion.

Now, reverting back to the distance between Alexandria and Gravelly Point, what is there in that distance between those two points that causes you to draw the line that that would be the end of this so-called uniform fare as you have determined?

A. Well, I do not know as I said it was the end. We have certain installations that were definitely located there, and my statement was that I thought that the District fare should apply to those installations.

I don't say that I do not think it should go further on that end.

621 Q. But at least it should go that far purely because it is a Governmental installation?

A. That applies to a Government installation.

Q. And you also stated that it was because it was a part of the metropolitan zone.

A. That is right, sir; it is included, as I understand, in these figures of the Commission as part of the metropolitan area.

Q. Did you know, or do you know whether or not the torpedo plant is within the so-called metropolitan area of Washington, D. C.?

A. I do not know, sir.

Q. You did not make an examination then of any office records and data compiled by the various Governmental agencies determining the extent of the so-called metropolitan area of Washington?

A. The metropolitan area, you mean?

Q. Yes, sir.

A. I did not, sir.

Q. You did not?

A. No, sir.

Mr. DUNLOP. May I ask one question to clarify the record?

Commr. PATTERSON. Certainly.

By Mr. DUNLOP:

Q. When you were talking about the metropolitan area in
622 Washington, is that synonymous with the metropolitan zone of Washington as fixed by the Interstate Commerce Commission?

A. The—my answer as to where the metropolitan area was taken from is this pamphlet put out by the Civil Service Commission in their figures on the Civil Service employees in the metropolitan area.

Now, I do not know how it is defined, I can't tell you that.

Q. Well, do you know what the basis of the so-called metropolitan area is, and if so, what the difference is between that and the commercial zone?

A. I do not, sir.

Q. You do not know what the metropolitan area is, then, do you?

A. No, sir. It is not my term, it is a Civil Service Commission term.

Q. Well, if the Civil Service Commission included, for instance, the Social Security employees in Baltimore, and that is where they have their headquarters, would those employees be included in this pamphlet?

A. If they did, sir, that would be the case. I can't imagine that they would be.

Col. BARRON. You would not, for your purposes anyway, include anything other than immediately adjacent areas, I mean such as these you testified about?

623 The WITNESS. No, sir.

Commr. PATTERSON. Would you include Bethesda; there is quite an operation in Bethesda.

The Civil Service Commission no doubt included these Bethesda employees likewise.

Mr. LANE. You would include them, I suppose?

The WITNESS. I should think they would come in the metropolitan area.

Mr. WHITTLESEY. How about Fort Myer?

The WITNESS. Well, now, you are asking me something again to define what some one else's term is.

I can't define it. They used the term; it is not my term.

Col. BARRON. If it is within a radius of three or four miles of the river, as some of these other installations are, would you be of that opinion?

The WITNESS. Yes, sir. I can simply say that in general, as a general practice, you have a certain metropolitan area used by Chambers of Commerce to denote the surrounding area.

By Mr. WHITTLESEY:

Q. Let me ask you: You are from Pontiac, Michigan, isn't that the home of the Pontiac Automobile?

A. That is, sir.

Q. That division of General Motors has a considerable number of employees in that town, does it not?

A. Yes, sir.

624 Q. Do you consider that those employees are entitled to some sort of special fare in Pontiac, Michigan, solely because they are employees of this one concern, rather than work as a ribbon clerk, for example?

A. Well, they get a 5 cent fare now.

Q. In addition to the—pardon me.

A. To answer your question, I do not consider that they are entitled to any more consideration than any other employees of the town.

Q. Well, that would also be true then of Government employees, would it not?

A. Very possibly.

Q. In other words, you do not think that Government employees merely as a class should be entitled to some sort of a preferential rate for transportation or anything else?

A. It would be very hard to testify.

Mr WHITTLESEY. That is all.

By Mr. HILL:

Q. Mr. Trueblood, will you give me the name of one of the bus companies for which you conducted an investigation, what city was it in?

A. One of the bus companies for which I conducted an investigation?

Q. I understood personally you were never actually employed by a bus company, were you?

A. No, sir.

625 Q. Your investigations have been in behalf of the Yellow Truck and Coach Company?

A. That is right, sir.

Q. Well, now, have you ever conducted one for any of the New Jersey or New York bus companies around Manhattan?

A. No, sir, not around Manhattan.

Q. Well, name me one outside of Pontiac.

A. Well, you inquired about New York or New York City operations. Bennington, for instance.

Q. No; no, I mean around Manhattan, New York area.

A. I have never happened to investigate anything in the neighborhood of Manhattan.

Q. Well, have you in any of the larger cities of the country?

A. Well, I have in Kansas City, and I have in St. Louis, and I have in Detroit. I never have in Washington.

Q. Well, now, what was the company in Detroit?

A. That was the Department of Street Railways, City of Detroit.

Q. That is municipally operated system?

A. Yes, sir.

Q. Now, what was the nature of your investigation for that company?

A. Well, the nature of the investigation for that company was related to the operation and the possible advantage to be had by operating large busses instead of small busses.

626 Q. Well, now, in what cities did you conduct an investigation which bore on the matter of reductions of fares?

A. Well, I mentioned that I had studied the fares to some extent in connection with the other work that I was doing in the surveys that I have made.

Now, there have been a number of towns where I have investigated the matter of fares and Kansas City was only one of them.

Q. Let's put it this way, that you have made an investigation for the sole purpose of measuring the reasonableness or unreasonableness of the then going level of fares?

A. No, sir.

Q. You never have?

A. No, sir.

Q. By the way, is the street car system in Pontiac municipally owned and operated?

A. No, sir. That is owned by the National City Lines.

Q. That is independently owned?

A. Yes, sir.

Q. Now, your figures concerning the number of employees of the executive branch of the Government, I think you furnished it, and I believe you gave a figure of 288,000; is that correct?

A. 280,

Q. 280?

627 A. Yes, sir. 280,000.

Q. Now, sir, I understand you to say that that was the majority of persons employed in the Metropolitan area of Washington; is that correct?

A. I said, sir, I believe that as far as employment was concerned, the Federal government was the principal business in Washington.

Q. And employed a greater number of people, I think you said, did you not?

A. Well, I may have said that.

Q. Well, now, where did you get that, where did you get the basis for that statement?

A. I think that the statement was that it was, just as I said before, that as far as employment was concerned, the Federal Government is the principal business in the city of Washington.

Q. You mean that it is larger than any other individual business?

A. That is right.

Q. You did not mean that it was larger than all individual businesses combined?

A. I have no knowledge of that.

Q. Well, I misunderstood you. On your statement of opinion that the District fare should be extended to these Government installations, have you given any study to the McNary Bill?

628 A. I have not given any study to it. I read the paper and saw where there was such a Bill.

Q. Do you think that that bill——

Col. BARRON. I object to it.

The WITNESS. I am hardly compentent to answer that.

By Mr. HILL:

Q. You are competent to answer whether you do or do not favor it?

A. I do not know what the bill is sufficiently for me to make an intelligent answer.

Q. Now, on this matter of making traffic count in order to determine how the income from certain passengers should be allocated, how did you say you would go about doing that?

A. I did not say, sir, how I would go about doing it. I said that periodical counts for the issuance of such passes might be employed.

Q. Yes. Well, would you just take special days, for instance, do you mean you would sell special passes printed and designated only for use between the District and the installation in Virginia?

A. I should think that would be the logical thing to do.

Q. And that pass, you would not use that for any other purpose?

A. I think that would be logical.

Q. Well, in effect, that would be a 12-trip ticket, wouldn't it?

A. Well, I do not know anything about what you would
629 want to make it.

Q. So that you would not be able to use the District fare or the District pass without buying two; is that your idea?

Col. BARRON. He did not say that.

The WITNESS. I did not say that.

By Mr. HILL:

Q. I did not say that you said it, but I asked if that was the idea. That is all I am asking of you. Now, if you were a District resident, and you worked over in the Pentagon and you wanted to ride back into the District once in a while, do you mean that they would pick up the District fare and also your pass, too?

A. What I meant was a special transfer.

Q. I am not asking you that, Mr. Trueblood, if there is a pass still maintained in the District and presumably there will be——

A. Yes, sir.

Q. You also would have to use a special pass or a form of transfer?

A. I referred, sir, to using a special transfer.

Q. Well, you now say you did not say a special pass. I misunderstood you.

A. Well, if I said a special pass, I was talking about a special transfer.

Q. You are not contending that the District fare should be used between the District and the Pentagon, then, the one
630 now in use?

A. I did not say that, sir.

Capt. DAVIS. He didn't say it.

Mr. HILL. I didn't say what he said. I am asking what he said. I want to find out.

Let him answer, Captain, I don't want you on the stand.

The WITNESS. My answer, sir, would be this, that a passenger living in the District and working in the Pentagon could use his pass inside the District, but that he would be given some sort of a special transfer which would carry him either over the Capital Transit Company lines or any other company's lines to the Pentagon Building.

That would be a special transfer, not a special pass.

By Mr. HILL:

Q. Then the Virginia companies would operate—would obtain their revenue by account of the transfers that were turned in to their busses; is that it?

A. That is the usual way of doing it.

Q. Well, there isn't any usual way right now for this, is there? Now, what would you do coming the other way?

A. The other way they probably would have to have a periodical count of the passengers.

Q. Now, what period would you think should be used and how often?

A. In the case of the other operations out there where they issue a transfer that is recognized by the Capital Transit
631 Company.

Q. When would you conduct these periodic counts that you mentioned?

A. Well, sir, if I was operating the line and charged with that responsibility, I would decide that question. Right now it is entirely theoretical.

Q. You have not given any real thought to the matter at all; you could possibly divide up the revenues from those passengers, isn't that a correct statement?

A. I have given enough thought on it to be certain that it can be done, sir.

Q. That it can be done?

A. Yes, sir.

Q. And you think a periodic traffic count would be the answer?

A. Special transfer, and a periodic count, and check on it.

Q. Just how would you conduct this periodic count, explain it to me, I am a layman in this business.

A. Well, the way you take counts is usually by having some count of passengers.

Q. All right. Where would you count the passengers?

A. The passengers can be counted as they get on the bus or as they get off the bus.

Q. Have you any idea of what force would be needed to make an actual and accurate count?

632 A. No, sir.

Q. You have not?

A. No.

Q. After you counted the number of passengers, let's say, getting off the bus at the Pentagon and to determine how many passengers got on for that day, then what would your next step be to try that, for how long?

A. You mean—I don't quite get your question.

Q. Well, you would not take a traffic count every day, would you?

A. No, sir.

Q. Well, how often would you take it?

A. Well, as I say, it is a purely hypothetical question. If I was charged with the responsibility, I would study the thing over and come to some conclusion that it should be taken once a month, or once a week, or some other figure.

Mr. HILL. I see.

Commr. PATTERSON. I think that we are losing a lot of time in this examination.

The WITNESS. That is simply the mechanics of the operation.

By Mr. HILL:

Q. The mechanics of the operation, but we are faced here with a real condition.

A. I can testify that I think it is possible to do so.

Commr. PATTERSON. He says he could testify to it if it
633 was his responsibility to do so, but he has not undertaken to do so.

Mr. HILL. But he has undertaken to come on here and tell us how to do it and I want to know how he would go about it.

Commr. PATTERSON. He is here telling the Commission.

By Mr. HILL:

Q. Have you ever put in such an arrangement before in conducting traffic count in any of your investigations?

A. I have not, sir; no.

Q. Have you ever seen it done?

A. Yes, sir.

Q. Wait a minute. Have you ever seen it done in any case where you conducted the investigation?

A. Not where I conducted the investigation, but in Chicago they had passes between the Elevated and the surface lines, Chicago Motor Coach.

Q. Well, how often do they conduct traffic tests?

A. Well, I am not familiar with that business.

Q. Have you ever had any experience with the taking of traffic counts, you, personally?

A. What are you talking about, Chicago?

Q. Anywhere.

A. Well, certainly, I have taken lots of them.

Q. You have taken lots of them?

A. Yes, sir.

634 Q. For what purpose?

A. Well, for the purpose of the surveys that I have made and for various other reasons.

Q. Wasn't it—wasn't the traffic count that you conducted to determine the flow through the different channels of traffic; wasn't that the purpose of it?

A. Yes, it was.

Q. Yes, at that particular time?

A. Yes.

Mr. PRETTYMAN. Do they have a pass in Chicago, you mentioned Chicago. They do not have a pass in Chicago, do they?

The WITNESS. Mr. Prettyman, that, I can't answer that question directly because I can't say just when the elevated lines abolished their pass, it was about a year ago. Now, whether or not it was before this three-company transfer or three-way transfer came in or immediately after, I will have to admit that I do not know.

The elevated lines did have a pass up until about, roughly, two years ago.

By Mr. HILL:

Q. Mr. Trueblood, at whose request did you come here to testify?

A. At the request of the Navy.

Q. I mean, somebody in the Navy, it wasn't the Secretary of the Navy himself who asked that you come over here, was it?

A. I work for the Transportation Branch which is under

635 Commander Randolph, he is the head of the Transportation Branch.

Q. He requested you to prepare yourself to testify in this case?

A. Yes, sir.

Q. Did he instruct you to testify along any certain lines?

A. No, sir.

Mr. HILL. That is all.

Commr. PATTERSON. That is all.

Capt. DAVIS. We have here a map of Kansas City which I thought might be helpful to clear up the record on that point. I notice from this map that the Missouri River separates the northern part of the two cities and south of that the state line follows the Kansas River for some distance, and after that runs straight through the city.

Perhaps Your Honor would like to look at this map. I do not believe that it is very important, but so long as the question was raised, we brought it down.

Exam. MATTINGLY. Do you have some more questions?

Capt. DAVIS. One or two questions to clear up some of this cross-examination.

Redirect examination by Capt. DAVIS:

Q. Mr. Trueblood, in discussing the possibility of a transfer to be used on the Virginia companies in connection with
636 these busses, it would be perfectly practicable to have a round trip transfer, would it not, so that there would be a count of the transfers going both ways on the Virginia companies?

Mr. LANE. Just a minute. I object to that question. I don't believe I understand it. What is a round trip transfer?

Capt. DAVIS. I think he can explain that.

Mr. LANE. I object to the form of the question. I do not think that anybody can answer it.

Mr. HILL. First, do you know what he means by a round trip transfer?

Capt. DAVIS. Wait a minute, let him see if he——

Mr. HILL. Well, how can he answer if he doesn't know what it is. That is a cinch.

The WITNESS. I have never run across such a thing as a round trip transfer.

By Capt. DAVIS:

Q. There is no reason why it would not be feasible, is there?

Mr. LANE. Maybe the Captain would like to testify on that one.

Mr. HILL. If the witness doesn't know what it is——

Commr. PATTERSON. He ha answered the question, there is no use prolonging it, if he says that he has never heard of one. That is a good enough answer to the question.

By Capt. DAVIS:

Q. Mr. Hill asked you, Mr. Trueblood, about how the
637 count could be made going the other way. Now, going from the Virginia lines to the Capital Transit Company, and assuming that the passenger used the Capital Transit Company pass, now one way, of course, you suggested by making a periodical count as is done by the Capital Transit Company now when

they count the passes used, and wouldn't it be possible also if the companies were not satisfied with such a method for the Capital Transit Company at the time the passenger came from the District to Virginia to issue a transfer with a return coupon on it, so that one half of the transfer would be used going over and the other half of the transfer be used going back?

A. I think there is a number of things that might be done, but you understand that when you start talking about transfers, you are talking about something that is undesirable from the start. No operator wants a transfer, he gives them because he has to.

Now, in this case it is ordinary procedure for the passenger to leave with the carrier some tangible evidence of the fact that he has used the transfer and it is perfectly possible, I think, in these cases, to work out some system of mechanics whereby that might be done.

The procedure you mentioned, I think, is possible, but there will always be objections to it, not because it particularly is any worse than any other, but because the transfer system itself is a burden on a bus operator or any transit oper-
638 tor, he doesn't like it, he uses it because he has to.

Q. But in other words, it would be a feasible way although from some point of view it would be more desirable to have the Capital Transit pass honored by the Virginia lines as has been ordinarily?

A. Well, I should say so, without giving it much thought.

Q. And in your opinion, that could easily be done by an adjustment of the division of revenues made by means of a periodical count so as to tell the number of passengers using those lines?

A. I think it could be done to the satisfaction of the parties.

Q. And, would it also be possible to use a different kind of a pass going on those lines which might be sold at these installations only to employees at these installation which could be sold by the Capital Transit Company, good throughout the District, and also good over these lines, and also sold in the District?

Mr. LANE. Is the Captain testifying or asking a question?

Capt. DAVIS. I am asking the question of an expert witness.

Mr. LANE. Are you the expert? Which is the expert?

Mr. QUIRK. Haven't you found that out yet?

The WITNESS. You are asking me, Captain, if that is possible. I think it is possible. I do not think it would be practicable, sir.

639 Mr. PRETTYMAN. What would you do about the fellow that just went over to the Pentagon Building once in a while and was not employed there, he would pay another fare?

The WITNESS. I think my answer covered that, Mr. Prettyman, it is possible.

Mr. PRETTYMAN. Captain, a poor little fellow like myself that is not employed by the Government, what would he do? I would pay some other fare?

Capt. DAVIS. Or you could ride the Capital Transit.

The WITNESS. If you will permit me, sir, to finish my answer. I answered the Captain that it was possible, but I did not think it was practicable.

By Capt. DAVIS:

Q. In other words, these other methods would be more desirable, in your opinion?

A. No, that suggestion is not practicable, I would say.

Mr. LANE. Mr. Trueblood, your testimony has been devoted to the people who travel the Capital Transit?

The WITNESS. Yes, sir.

Mr. LANE. What about the casual riders, do you recommend the District fare from any point in the District to the Pentagon Building for them as well?

The WITNESS. You mean the man that pays 10 cents?

Mr. LANE. I mean the man who doesn't board the Capital Transit Company's lines before going to Virginia?

The WITNESS. Such as your own line?

640 Mr. LANE. Such as my line; yes.

The WITNESS. Well, I think the District fare should very well apply to him. You do not have a pass, of course.

Mr. LANE. All right. Mr. Trueblood, you recognize that the transfer is undesirable one of the reasons that the transfer is undesirable, one of the reasons why that is so is because of the difficulty of controlling their use by operators, let us say, dishonest operators can very easily manipulate those and permit their use by riders, can they not?

In other words, it is difficult for the companies to have any supervision over the transfers so that you can avoid their illegal use, you might say.

The WITNESS. That is one of the troubles with them, sir; they are a pain in the neck from the start.

By Capt. DAVIS:

Q. That is also true of the pass, isn't it?

A. Yes, sir.

Mr. LANE. Wait a minute. On the pass, you do not have that difficulty, do you, with the operation of the pass, the drivers, they have to account for the number of passes that they have in their possession when they sell them?

The WITNESS. I guess I misunderstood your former question. I thought you were talking about illegal use by the passenger.

641 Mr. LANE. No, no; I am talking about illegal use by the drivers of the bus, and there are even dishonest drivers on the busses.

The WITNESS. Well, I will say there are troubles from both standpoints.

Mr. LANE. But when a driver is given a supply of passes, he has to account for them?

The WITNESS. Yes, sir.

Mr. LANE. And when you say illegal use of the pass, Mr. Trueblood, are you referring to the pass, such as that in the District of Columbia?

The WITNESS. Yes; any weekly pass, sir.

Mr. LANE. How would you use the Capital Transit pass illegally?

The WITNESS. Well, I think, possibly you have heard of where they would get on the vehicle and pass the cardboard outside the window to somebody else who would get on and use the pass.

Mr. HILL. You can do that by standing on the back side of the bus and letting him drop it.

The WITNESS. That is just one instance.

Mr. LANE. You recognize the possibilities of transfer?

The WITNESS. Yes, sir; it is supposed to be in the custody of the passenger, I believe, at all times. That is what makes it
642 illegal, I think, when they pass it out the window.

Col. BARRON. We have no more questions.

Commr. PATTERSON. You are excused.

(Witness excused.)

Col. BARRON. Mr. Heberle, if he is here.

Capt. DAVIS. If Your Honor please, we proposed to ask Mr. Heberle as an officer of one of these respondents a few questions on a relatively limited subject, and I just want to understand that we are not making him our witness for any other purpose.

Commr. PATTERSON. You may proceed.

J. E. HEBERLE resumed the stand and testified further as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name and position for the record, please?

A. J. E. Heberle, vice president and comptroller of the Capital Transit Company.

Q. Mr. Heberle, you were here during Mr. Merrill's testimony yesterday?

A. Yes.

Q. Now, I believe Mr. Merrill was asked what allocation had been made of expenses allocable to the passengers who ride on your lines to the Pentagon Building, and Mr. Merrill stated that

643 you could answer that better than he could. Will you answer that in your own way?

A. I have prepared an exhibit——

Col. BARRON. Just a minute. Let us see it. [A copy of the exhibit was handed to Colonel Barron.]

Col. BARRON. We are just asking him a question. We do not want him to introduce any exhibit by him. Let us see what it shows [after examination]. Let it go in for what it is worth.

The WITNESS. You asked if we had made any segregation of expenses to the Pentagon Line, if I understood your question correctly.

Capt. DAVIS. One moment.

(Capital Transit Exhibit 89, Witness Herberle, marked for identification.)

The WITNESS. This statement that I have handed you and suggested that it may be made an exhibit in this case does make such a separation and I am ready to explain it, if you desire.

Capt. DAVIS. We would be glad to have it put in as an exhibit and have it explained, understanding, of course, that we are not sponsoring it.

Mr. HILL. Well, I would like to inquire now whose witness this is.

Capt. DAVIS. It is a company witness who has been produced at our request.

Commr. PATTERSON. Well, let's settle it by saying that he
644 is the Commission's witness.

Exam. MATTINGLY. This is No. 89.

The WITNESS. The statement that I have referred to has been identified as Exhibit No. 89, and is headed: "Pentagon Line—Income Statement Seven Months Ended July 31, 1943," and the explanation that I will make will run to the statement as a whole, including the heading.

The columns of the statement, underscored headings, are: First "Basis" "Total" "Per Bus Mile" and "Per Passenger."

The various descriptions under the heading "Basis," are intended to give a general lead to the method in which the information was obtained.

Under "Total," we have developed total revenues and expenses for the seven months' period on the per passenger and on the per bus mile, and the figures are derived from that total by using the miles operated and the passengers, as shown in the figures at the bottom of the statement.

Now, I will go down through some of the headings under this; if you don't need all of this explanation, I will be glad to have you tell me.

Capt. DAVIS. Off the record.

Have you got a copy, more copies of that?

The WITNESS. Yes, sir.

645 In the first place, I might state that the Pentagon line differs from others, certainly differs from lines within the District of Columbia, in that there is a separate fare collected for the ride on this service, so that we are able to separate the revenue, and to set up the revenue accurately for the line.

During the seven months ended July 31, 1943, the total revenue from the Pentagon line, including lines that have been referred to as Q–2 and R–9, was $179,524.55.

Now, we also have certain expenses that can be directly proportionately allocated to the line while there are other expenses incidental to furnishing this service that must necessarily be allocated from the system expenses. And by "system" in this connection I mean bus system of the Capital Transit Company and not the combined rail and bus system.

Operating expenses, the "maintenance of plant and equipment" and "operating garage expenses" are allocated on the basis of the system cost per mile. In making up this statement it was made up for each month because the mileage and some other characteristic of the line varied during the period, and this statement that I am handing you here and referring to, is a consolidation of seven months' statement. It is a consolidation of the seven months.

Under "superintendence of transportation, operations," refers to the superintendent that is furnished at the Pentagon Building, and "schedules and traffic" are the expenses of the
646 schedules and traffic department, with respect to this operation, directly chargeable to it.

The "Bus Operators' Wages" are the wages that are allocated each day as the pay rolls are handled, and is as accurate as we can get the Pentagon operation.

"Fare Collectors—Pentagon" are the fare collectors employed over there on the Pentagon Building.

Training and road expenses are allocated on the basis of the system cost per mile.

Similarly, traffic promotion.

Injuries and damages, we use the same method on this line that we use for our system, set up an accrual for injuries and damages, 4 per cent on our passenger revenues.

Now, the accrual for injuries and damages is intended to cover the expenses that are incurred during the current period by reason of the operations during that period and we set up a reserve and against that the actual adjustments are made as those charges materialize, which may be over a number of years in the future.

"Other General and Miscellaneous" expenses are allocated on the system cost per bus mile.

The "Rent of Equipment" there is a reference to Note 1, and that merely states that this equipment is the equipment that we are
647 leasing from the Defense Plants Corporation on which the minimum rental is $1500 and the number of such busses allocated to this operation is an average number that we obtained by studying a number of days, and we arrived at an average number of such busses used on the Pentagon line.

It does not presume to actually state the daily use of such busses because, in the very nature of things, the same busses are not used on the line daily.

Depreciation was the depreciation accrual is not relating to busses other than those considered above under rent of equipment, and both with respect to depreciation and rent of equipment, particularly depreciation, I might spend a few minutes going into some detail on it.

Now, the Pentagon operation during the month of July, and I will use that as typical, because I must go back to a month and give the plan of this. There were 88 busses, that was the number of busses that were employed to operate the line, and to that I have added 10 percent for spares, or a total of 97 busses were required on that line.

From that, I first deduct 18 busses, that being the average of the leased Defense Plants busses that are used in the service as developed by this study I have referred to, and that leaves a net of 79 busses for which the depreciation accruals are provided.

Col. BARRON. You say there are 18 busses that are used in the Pentagon Building, according to that?

The WITNESS. Yes, I might say, Colonel, that for each
648 of the months I have assumed the 18 busses. However, the study——

Col. BARRON. What percentage do they represent of the total busses used on that line?

The WITNESS. Well, it is 18 out of a total of 97, something less than 20 percent.

Now, going back to the number, I subtract 18 from 97, which left me 79 busses. Of the 79 busses there are 2 busses that are used, that during this period were used exclusively on the Pentagon line, that is the demands of the line called for busses during the month of July which could be met with from busses possibly used on other lines, with the exception of two units, so that there are two definitely assigned busses that were devoted solely to Pentagon.

As the result of a further study that was made of the cost of the busses used on Pentagon line, we have used $11,286 as the average cost of busses that are used. These busses range in price,

in cost, from $10,000 on this particular day to $14,418. We have used $11,286 as the cost.

Now, for depreciation purposes, the two busses that are solely used on the line are carried over at 100 percent, that is, 2 at $11,286 and with respect to the 77 other busses, consideration must be given to the fact that these busses were only used on the Pentagon, or not only used on the Pentagon line but they are also used on other lines of the company.

649 Now, the Pentagon operation is strictly confined to rush hours. The average use of busses in the rush hours in our service is approximately four hours per bus, and the average use of busses on the Pentagon service and in the rush hour use is 2 hours, approximately, so that these busses that are used on Pentagon service are taken in at 50 percent, assuming that one half of their use is over on the transit lines, that one-half being derived, as I have explained, so we take 77 busses over in July at this $11,286, divide it by 2, which give us a bus depreciable value for the 79 busses.

Now, there are other facilities that are used by these busses, other Capital facilities, depreciable property, and that consists of, for this purpose I have taken bus garages and land only. It is separate computation I have made for this Pentagon operation that takes the cost of the garage buildings and the land that we have for all of our busses. It so happens that our bus fleet has grown during the past few years much faster than our housing facilities for them, so we do not have a roof for each bus, and what I have done here is to take the aggregate cost of bus garages that we have and have divided it by the total number of busses that we now have, and I get what is a low figure for a bus garage per bus, $1,351, that is because of the fact, as I have explained, we do not have housing facilities for all of them, there are some of them in open storage. I take the $1,351 for busses thus
650 arrived at, and apply it to the 97 busses that are required, 97 of which are used on other lines, so I only use 50 percent of the amount that is so devoted, and for the 2 of them I use the full amount of $1,351 and the rate of depreciation on the garages I have used 2 percent, as I have stated, I have used on the busses 10 percent. That is another matter that differs slightly from our practice with respect to our bus count since we are using 11.9 percent, meaning a 9 year life on the buildings as a whole, and I have used 10 percent here.

In this manner I developed an annual depreciation for busses and garages of $47,045, and since we are merely allocating for one month, I divide that by 12, and the corresponding depreciation charge for that month, $3,920, is brought over into the statement

and becomes a part of this, that consolidated, is in the statement Exhibit No. 89.

Now, with respect to taxes, taxes included are the bus license taxes, a percentage of real estate taxes that are allocated into bus operations within the District of Columbia, based on the system per bus mile.

Similarly, for the gasoline tax and social security tax applicable to each employee is determined by determining the labor, the proportion of labor, in their joint groups, and applying the percentage of social security tax to it.

In other words, so far as the taxes are concerned, it was
651 necessary all the way through to estimate on some basis, and I have used the bus mileage that seemed appropriate to me.

Those are the taxes that are included in this group.

The sum total of these items of expense shown on the exhibit are $193,617, which exceeds the actual return derived from the line during this period by $14,093, and I have added to that a return on investment at 7 cents per annum, and the investment has been determined by means of allocations similar to those I have used in determining depreciation, $22,855, and the last figure on the statement is marked as "Net Loss For Seven Months Including Return," $36,948.76.

Now, expressed in per bus mile, we have marked opposite each of the total figures the corresponding figures per bus mile which, as I have already explained, has been derived by division and in the last column "Per Passenger" figures, where the actual revenue, of course, was 5 cents per passenger, and the last, after depreciation and taxes and before return, as shown on the statement is—0.39, thiry-nine hundredths of one cent, that is, the cost to us was 0.39 cents excluding returns as against a revenue of 5 cents, and a total loss after a 7 percent return, and that is shown as—1.03 cents. That is, per passenger.

By Capt. DAVIS:

Q. Now, in making these allocations in some cases you used the bus mile for your whole system, and in other cases you
652 tried to make a somewhat more, what you might call, a more specific allocation where you could charge expenses to this particular line.

A. Where the expenses have been kept as near as they can be accurately kept, we have used the actual expenses.

Q. Have you figured out what the cost would be if you took that same cost per bus mile as your basis for comparison?

A. No, I have not made that calculation, Captain.

Q. What was the result or what would the result on that calculation be, approximately?

A. The system, excluding Pentagon, because I find I do have a calculation of that sort, Captain, for the same period on the basis of the per bus mile, is 36.60 and that compares with 45.28 cents, as shown on this exhibit.

The two figures are not comparable, because the Pentagon is a special operation and is distinctly a rush hour service. It participates, has nothing else to participate in, but the higher cost incident to the operation during rush hours, while the costs of the system as a whole run to the cost at this time of about 20 hours of the day.

Q. Well, if that is what you have done in preparing Exhibit 89, is to use some of all liable general overhead, but in addition charge all those expenses to this operation that can be charged to it in addition to the general overhead; is that correct?

A. That is correct, because I believe that that is the proper, practical way to arrive at the cost of this line.

653 Q. Now, go down through some of these——

A. (Interposing.) I might say, so that there will be no misunderstanding, Captain, I have not included in the allocation any costs that are of the nature or the same kind as the cost for which I have direct expenses. Those are excluded, there is no duplication in the statement. But on the other hand, unless we do put in what you have termed general overhead, I would have an incomplete cost of the operation.

Q. Well, now, going down some of these specific items, these first two items under operating expenses, maintenance of plant and equipment, and operating garage expenses are expenses that you would incur anyway, aren't they, whether you operated to the Pentagon or not?

A. No, I would not say that. I would say this, though, that they would not be incurred to the same extent, no more than I would have the same charges if I left my automobile in the garage or I took it out on the street and ran it.

Q. That is an overall cost of operating the whole transportation system, it is not peculiarly confined to this line, is it?

A. Yes; because we attach to any operation such as this line, and those operations as conducted on the transportation system as a whole.

Q. Well, it does not cost you any more to maintain a bus just because you happen to use it over at the Pentagon?

654 A. It does.

Q. I mean, so far as this particular item is concerned?

A. It does.

Q. Would you explain why?

A. Well, one example is that we pay so much a mile for tires for every mile that we run. Now, that is one instance, but the same thing goes through maintenance and repairs of the bus.

Q. If you operate a vehicle you are making it subject to maintenance per mile, and the cost is no heavier to the Pentagon Building?

A. No.; and I have used the same cost per mile, maybe I misunderstood you, Captain, I used the system cost per mile average.

Q. Now, going to the superintendence of transportation.

A. Yes, sir.

Q. What is this item "Operations" under that; will you explain what that is?

A. Yes; those are the inspectors and supervisors who are employed at the Pentagon Building and on the street directing Pentagon operations. They are men whose time is kept every day and the time that they spend on this operation is kept separately, and this is the accumulation of it.

Q. Do those men also work on the other lines, too?

A. They do, but when they do, their wages and salaries are not charged to Pentagon and not included here.

655 Q. However, this item of $13,350 represents an allocation of their salaries as between the Pentagon and the rest of the system?

A. It represents the actual time spent on the job, it is their actual rate of pay spent on the Pentagon operation.

Mr. PRETTYMAN. There is no allocation involved?

The WITNESS. There is no allocation involved except of course if you would consider this an allocation, the man who has an 8-hour turn and shows 3 hours at the Pentagon operation, and that he spent 5 hours on some other line, as he reported his day, only 3 hours are charged to the Pentagon.

By Capt. DAVIS:

Q. Now, is the per bus mile, cost of superintendence of transportation throughout the system outside of this line approximately 2.1 cents per mile, per bus mile?

A. For the first seven months, this same period, our superintendence of transportation was 2.24 per mile. That includes Pentagon. I can not in this statement separate the account.

Q. Yes.

A. Now, the——

Q. Well, now, how do you explain the fact that it is so much more expensive to supervise the operation of that line?

A. Because in the first place, it is a costly line to supervise, due to certain procedures that are followed at the Pentagon Building, necessarily so.

656 Q. Is that because of the fact—excuse me.

A. May I continue?

Q. I beg your pardon.

A. Yes. I am not saying that this Pentagon line in this particular item would show a higher cost per mile for the service, the Pentagon service, than similar costs on the other lines, if we could segregate and allocate that to the rush hour period and determine the number of miles that were operated during the rush hour period on these other lines, but that problem is just too much, I really can not make a comparison between Pentagon and the others on a similar basis. Possibly, I could have more properly have answered your question that the reason for the difference is that Pentagon is a rush hour service and supervision is much more costly during rush hours than it is during the other hours of the day, as are other items also.

Q. So that while you have not been able to make a calculation, it is your belief from your knowledge of the company's operations that there would be a still higher cost of superintendance than any of the other lines during the rush hour period?

A. I think there might be. The fact is that the average of everything is 2.21 for the whole system including Pentagon throughout all hours of the day.

Q. Now, I notice the fare collectors at Pentagon received $19,183, which is approximately 4½ cents per bus mile.

657 That is an expense peculiar to that operation, is it not?

A. The system is different in that operation than it is in other parts of the system. Yes.

Q. Now, of course—

A. I might say that in other parts of the system you might have a higher cost for this same kind of a line if you had the normal standard fare practice you would have a higher cost in the bus operator's wages, because it is a known fact that this system at the Pentagon has the result of expediting the busses on the streets.

It relieves the operator from a number of duties and takes less time to load the busses.

Q. But if you didn't have an extra fare to the Pentagon, of course, you would not have that additional expense there?

A. That is correct.

Q. Now, coming down to injuries and damages under administrative and general expenses, the figure being approximately $7,180, I notice that is based on 4 percent of the passenger revenue. You used a similar figure throughout the rest of your system?

A. Yes. That is based on our experience in settling claims.

Q. Well, now, have you made any separation of the claims for injuries and damages on this Pentagon line as distinguished from other lines?

A. No, I do not have that separation. It is possible that
658 something of that sort could be developed, something about our experience on the Pentagon.

Q. So far as you know it is neither higher nor lower than elsewhere per mile per passenger?

A. That is correct.

Q. Now, on this renting of equipment, you have shown the amount of $7,875, and I notice the per bus mile cost is 1.84.

A. Yes, Captain.

Q. Would you explain that somewhat, would you tell us whether the cost per bus mile for your whole system is approximately 5.8?

A. Well, there is one thing I would like to say——

Q. Certainly.

A. —— that you can readily understand that here I have the detail of rent of equipment separated. Now, I applied the total mileage to each one of those factors because I did not know the number of miles that were operated by the leased busses, so that this figure here, per mile figure of 1.84 is distorted on the whole system. It does not represent 1.84 cents per mile as lease rental paid for those busses, but is merely the total dollars as I have testified for the leased busses, divided by the total number of miles.

Now, possibly, with that explanation you will want to start somewhere else on your question.

659 Q. You have at your finger tips the total figure for rent of rolling stock for the first seven months of 1943?

A. Yes, sir.

Q. Would you give me that figure, please?

A. $93,699.

Q. What does that amount to in terms of bus mile for the whole system?

A. 0.6—that is six-tenths of a cent.

Q. Well, now, why is this figure so much bigger for this particular line?

A. Because I have used 18 busses out of a total of 97, I think those are the figures, in the month of July, as rented busses allocated to the Pentagon line. There are a total of 120 such busses. They represent a much smaller percent of the total number of busses owned and operated by us than 18 does of 97 on Pentagon.

Q. In other words——

A. Another matter for your further information, Captain——

Q. Yes; certainly.

A. Also the milage per bus on the Pentagon ope ation, because it is rush hour, bus will not be the average of the mileage per bus realized from all of the busses—bus mile of the busses used anywhere—your base as well as your peak hours, you have two factors that would tend to make a substantial difference between those two figures that you have referred to.

660 Q. In other words, you make the allocation on this basis, purely on the theory of using somewhat less busses on this line in proportion to your total operations and partly on the theory it is rush hour service, so you charge a larger proportion of it to the service per bus mile?

A. I am sorry; that is not correct.

Q. Will you explain?

A. We allocate first to the Pentagon operation, after a study of the actual busses that were used out there for a number of days, I think there were 12 or 15 days that we had studies, and found out how many of these leased busses we should properly use as an average number used on Pentagon.

As a result of that study, it appeared to me that 18 was a number that I could use.

Now, I am very frank in saying that I do not know whether 18 busses is the correct number for each and every month from January on or not, but I would say that generally through the latter part of the period when this study was made that 18 is correct, or I mean, is a fair number to use for that purpose.

Now, that means 18 out of 120 leased busses that for this purpose are allocated to Pentagon, but Pentagon did not get the full rental charges on those busses, the rental charges being $1,500 per month per bus, because I have assumed——

Mr. PRETTYMAN. Per month?

661 The WITNESS. No, it is per annum per bus, $1,500 per annum per bus, and I have assumed that these busses were used in equal proportions of their time on the Pentagon and on other rush hour service, and I took one-half of the rental charge.

By Capt. DAVIS:

Q. Now, the rental rate of these busses is 5 cents per bus mile, isn't it?

A. I wish it were, but unfortunately the minimum is $1,500 per annum per bus, which is $125 per month per bus.

Q. Well——

A. Along the line, Captain, because the question may come up later——

Q. Well, I believe you said that——

A. May I complete the answer, if you please?

Q. I beg your pardon.

A. The rental for the first time that year was the Defense Plants Corporation which rents us the busses was 10.39 cents per mile and these busses participated in that cost.

Q. I thought you said a few minutes ago that the average rental per bus mile was six-tenths of a cent?

A. I said that, and I thought I stated clearly myself that that was the amount that Capital Transit Company paid for bus rental during the seven months' period, including Pentagon. In other words, everything divided by the total miles operated by Capital Transit Bus system, it brings out six-tenths of a cent.

Q. Yes.

662 A. Not a significant figure with respect to all cost for bus mile.

Q. Yes, except in so far as the——

Capt. DAVIS: Well, strike that out.

By Capt. DAVIS:

Q. Well, do you mean to imply from these last answers, Mr. Heberle, that Defense Plants Corporation busses are used much less than your other busses?

A. No; I would say we have substantial number of busses that are used about the same mileage as the other busses.

Rush hour busses can not make the miles.

Aloing that line, I might say, Captain, that in the rush hours I think 4.4 times as many busses required as there are during the balance of the time.

Q. Now——

A. (Continuing.) Those busses that are out there from one to four hours a day continuously do not make the miles and there are a great many of them.

Q. Do you know how long a round trip takes for the busses to and from the Pentagon?

A. It is my understandingf it is a half hour, but for more accurate information on that, I think you had better ask Mr. Locke.

Q. Yes. Well, now, how many busses leave or enter the Pentagon Building in a 30-minute period?

A. Will you please direct that question to Mr. Locke?

663 Q. Have you taken into consideration those facts in estimating the, whatever those facts are, in making your charge of a certain number of busses against Pentagon?

A. It was not necessary because we determine every day from the manifests the number of busses that are used on the Pentagon

operation. That is one function of my office, because it is a special operation.

Q. Well, now, assuming that only 60 busses enter or leave the Pentagon in a 30 minutes period, and assuming the round trip takes about 30 minutes, how do you account for charging 97 busses against the Pentagon?

A. I am sorry, but I can not make that assumption.

Q. Is it because one bus is put on for one trip and then taken off and then put on some other line?

A. Well, I do not know as I can answer that either, because I do not understand it, but it is a fact that some busses are used for one trip on Pentagon and some days they are used for some trips on some other lines, but we do actually determine every day the number of busses that are used, and that information we get out as a part of our work every day.

We not only determine that every day but we determine the number of busses that are used on Pentagon in connection with some other service, some other run, than on those that are used solely on Pentagon.

Q. Well, now, coming on down to the depreciation figure,
664 which is $28,791 on Exhibit 89, can you tell us how that compares with your over-all allowance for bus depreciation per bus mile for the whole system?

A. Yes. For the same ~~period the total~~, including Pentagon, was 4.34 cents, which compares with this figure of 6.74 that is shown on this statement, and the same comment applies to that 6.4 that applied to the rent of equipment, it is the number of dollars divided by the number of miles. Actually, however, that figure would be higher if I knew how many miles were operated by those Pentagon busses and the difference between the two would be greater.

Q. How do you account for that difference?

A. By the cost of the busses. First, the busses used on Pentagon are all of the larger size and that is not the material part. The material part is that the busses used on Pentagon are of the newer kind, there are no fully depreciated busses used on that line, and when I say there are none, I say that within the range of my studies. I mean, I will not say that at some time some one of these fully depreciated busses did not get down there, but that is in all of the studies that we have made there are none of the fully depreciated busses.

The other, and the most important reason is that your mileage, if the mileage on busses or the use of busses is limited, they will not make the miles over there they are allowed, and if they
665 do not make the miles, the depreciation cost per mile will be greater than if they are in heavier service.

I have been listening to figures of 50,000 miles per annum and 10 years or 500,000 miles. I have been in the business a long time and I have heard figures of that kind before, but I just don't happen to have had any connection with or very close opportunity of observing any such operation. We do not, we cannot get 50,000 miles out of a bus. We are limited here in our bus-miles by the fact that in the rush period, we require 4.4 times as many busses as we do in the off-peak period, and we also have the conditions that exist here on our lines to contend with with respect to stops, and so forth.

Q. Do you know how many miles you do get out of a bus, ordinarily, per year?

A. No. Any information that you desire I will attempt to go into it if you want an answer I would be glad to answer.

Capt. DAVIS. We will be glad to have the correct figure if you will give it to us. Tomorrow?

The WITNESS. Well, I might not be able to give it to you tomorrow, because when we finish I am not always able to get back to the office, but I will get it for you.

By Capt. DAVIS:

Q. Yes, it will be helpful as long as this matter is raised. Now, you referred to the fact that you have no fully
666. depreciated busses on this line. You have some fully depreciated busses which you are operating on other lines?

A. We have them, yes; but they are not operated to any great extent. Now, when I make that statement, that is a general statement that is not really backed by general information, but I do, from my knowledge I do know that we are operating generally the newer and the better busses that we have, and the older busses are not being operated.

As a matter of fact, we have a few busses that I do not believe we could operate, I think the parts are not there, so there might be a few in our list of busses that we might not be able to operate.

Q. Your explanation of the higher depreciation charge was partly on the theory of the newer busses and larger busses and accordingly there is a higher depreciation per bus mile?

A. That is right.

Q. Than these older ones used in the other parts of the system?

A. It would not make any difference whether the busses were operated or not, whatever depreciation would have been accrued on these busses, that is the fully depreciated busses, would be credited to the system as a whole, and the Pentagon line is being charged with busses that are under depreciated and it is our best knowledge and belief that the busses operated on that line are only of that class.

667 Q. Now, when a bus is old and they are fully depreciated or largely depreciated, the maintenance cost per mile is higher, is it not?

A. Well, just speculating on it, I would say yes, but that is not the basis of comparative statement on old and new busses. We do have, and it is a fact that generally when you receive new busses for a brief period you do not look for any maintenance charges. I think you expect them to run a little while while they are new, although as some of the gentlemen that are here have experienced the bus operations and now have sought other fields, necessarily or otherwise, they know that a new bus can cost you a lot of money right from the first.

We have new busses on this line with a maintenance cost allocated figure of 0.5.30 per bus mile shown in the second line for maintenance of plant and equipment.

Q. Yes.

A. And it must also be noted, we have included in there quite a few vehicles of smaller size where the maintenance might not be as great, and we have taken the average system cost.

Q. You take the average system in this case where it might well be lower because of the new busses, but you do not take an average for the depreciation, and you think that that is higher because they are new and larger busses?

668 A. Remember, Captain, I do not agree with your statement. I said that there might well be higher or lower, or I said, might even be lower or might well be higher, it might be either way.

I think that taking the characteristics, the average of all of them, is a fair way of proceeding.

Q. You say it is fair then for maintenance, let me get that straight.

A. To the Pentagon line as a conservative statement of cost.

Q. But wouldn't you say that it was proper to do that for depreciation?

A. No, because you have gotten an entirely different proposition there, Captain. Absolutely no connection between the two, because maintenance is something that runs to operation of the busses whether it is in the rush hours or in the nonrush hours, but depreciation runs to the volume or amount of property that you are required to have for the operation.

Q. Yes.

A. And of course the time element from the depreciation standpoint.

Q. Well, now, the amount of use of the busses, of course, is no different to the Pentagon than for any of the other rush hour operations, is it?

A. Amount of use?

Q. Yes.

A. I have estimated that the busses on Pentagon will
669 receive, insofar as usage is concerned, represents about one-half the average bus in rush hour service on the system as a whole.

Q. You mean they are used only for half as long a time?

A. Yes; your Pentagon represents two as compared with four hours approximately.

Q. You mean by that——

A. Well——

Q. What you mean by that is that these busses are used two hours for the Pentagon service and then the same bus is used two hours elsewhere during the rush hour?

A. That is right, because the busses that do not go on to Pentagon are used for four hours. Pentagon takes two, so we charge two hours for the bus that used on Pentagon, and if it is also used on other service after it goes to Pentagon, that must be charged to the rest of the system.

Q. Well, in fact, you have a good deal of rush hour service, do you not?

A. Yes, sir.

Q. And isn't it true that in that rush hour service you use a great many busses that are not used a great deal during the rest of the day?

A. Yes, sir.

Q. So that your rush here, whatever cost there may be to it, is not peculiar to the Pentagon operation, is it?

A. It is—it is peculiar in this way, that these other
670 lines have the offset for the unusual condition, they have a normal run throughout the day and Pentagon does not.

Q. But these busses at the Pentagon are available for use on these other lines during the day, aren't they?

A. Yes.

Q. So in that respect, so far as busses are concerned, you have your choice as to whether you keep these particular busses in use during the day or keep some other bus in use during the day?

A. Well, of course, we have a choice in the selection of busses at any time, but the facts are that during the rush period, if you were to eliminate the rush period, of course, you would, that would mean the elimination of Pentagon along with the others, you would have a flat line, or flat run there that would require say, in our case, around 120 busses.

Now, when you get into the morning peak and the afternoon peak, you have got to have about four times that number of busses,

and those busses have got to be purchased, have to be available for those peak periods.

When those peak periods are over those busses go right back into the garage.

Now, in some cases it may be that a bus may be put on a line for a brief time, it may not go direct to the garage, but when it goes on, another one goes off, and you have those peaks in there that compel you to have your busses, and the only place
671 they are chargeable is to those peak periods.

Q. But that peak condition is not peculiar to the Pentagon line, is it?

A. We have other peaks on other lines; yes, sir.

Q. What does this figure for taxes include, does that include your income tax?

A. No, there is no income tax. I gave for the record just exactly what was included.

Q. In other words, it includes gasoline and other operating taxes?

A. Right, it is constructed, as I said, I have set up an income statement on a reasonable basis, it does not purport to include everything that would be chargeable to the line, and those taxes that are there they are on a basis that I believe is reasonable for allocation purposes.

Q. Mr. Heberle, have you made any similar statement——

A. Pardon me?

Q. Have you made any similar estimate or attempt to allocate your expenses as between any of the other bus lines throughout the system?

A. We have not. In the first place, we could not, so far as that is concerned, I would be stopped on that top line, Captain.

Q. Well, the top line concerns revenue.

A. The passenger revenue. I am stopped before I start.

Q. Well, leaving aside the revenue for the moment,
672 what difficulties would there be in allocating expenses for any given line of your system which you do not have for the Pentagon line?

A. Some of these, the difficulties would be about the same, the difficulties of any very intensive attempts to analyze would take a great deal of time and be very—it is one of those things that would be, with respect to many of the items, you could say was not impossible, but would be very difficult.

In this case here, I have explained that in the case of this line's experience, many of those factors on this line, because it is a separate and peculiar operation, that requires certain kinds of service, requires in the very nature of things, including the nature

of the construction of the Pentagon Building, it requires a little different handling from any other line, and because of that it is set apart and we are able to get some cost on it.

I would not want to undertake to do the same thing for all of the lines of the system.

Col. BARRON. What do you estimate to be the cost of equipment allocated to that line, the equipment under lease?

The WITNESS. Of course, Colonel, the equipment that is leased is not included in capital because at any stage of the game we pay the rental on it.

Capt. DAVIS. Yes.

673 Col. BARRON. I see.

Capt. DAVIS. I have one more question.

The WITNESS. Yes.

By Capt. DAVIS:

Q. What would be the allocation of the cost?

Commr. PATTERSON. I think this is a good place to stop.

Captain DAVIS. Yes, sir.

(Witness temporarily excused.)

Commr. PATTERSON. We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned to Friday, September 10, 1943, at 9:30 o'clock a. m.)

673 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B,"
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Friday, September 10, 1943.

Hearing in the above-entitled matter was resumed at 9:30 o'clock a. m., pursuant to adjournment.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances: Same as heretofore noted, and the additional appearances:

F. G. Awalt, 822 Connecticut Avenue, Washington, D. C., appearing for Capital Transit.

Harry G. TARRINGTON, Department of Commerce Building, Washington, D. C., appearing for the Secrtary of Commerce, and the Civil Aeronautics Administration.

Commr. PATTERSON. You may proceed.

Col. BARRON. I would like to have Mr. Locke for a few minutes before we resume with Mr. Heberle.

Mr. DUNLOP. Mr. Commissioner, before we begin, I would like to have Mr. Awalt, Mr. Prettyman's partner, enter his appearance.

Commr. PATTERSON. All right.

Mr. AWALT. F. G. Awalt, 822 Connecticut Avenue, appearing for Capital Transit Company.

Commr. PATTERSON. Colonel Barron asks that Mr. Locke take the stand for two or three minutes.

Col. BARRON. Yes, sir.

Exam. MATTINGLY. What is your full name?

Mr. AWALT. F. G. Awalt.

DEAN J. LOCKE was sworn and testified as follows:

Direct Examination by Col. BARRON:

Q. State your name.

A. Dean J. Locke.

Q. Your address.

A. 5200 Murray Road, Chevy Chase, Maryland.

Q. Your occupation?

A. Staff engineer, Capital Transit Company.

Q. How long?

676 A. Seven years.

Q. How long does it require for a trip to the Pentagon Building on Route R-2, Mr. Locke?

A. The time varies from trip to trip but between terminals averages about 10 minutes.

Q. Round trip would be about 20 to 30 minutes?

A. The round trip on R-2 is normally about 24 minutes.

Q. What are the maximum number of busses arriving at the Pentagon Building in the morning on your present schedules?

A. Just at the present time the service rendered is somewhat less than it has been heretofore due to the declining traffic.

Q. I did not ask you that.

A. That is explanatory, if you please.

Col. BARRON. I would like for these witnesses to answer our questions.

Commr. PATTERSON. We have permitted all these witnesses to wander around.

Col. BARRON. They can bring that in, if your Honor please, in examination by their own counsel.

The WITNESS. During the half hour in the morning in which the maximum traffic is found we have a total of 37 busses arriving at Pentagon on Route R–2 in the period between 8 and 8:30 on September 8.

By Col. BARRON:

Q. What have the counts shown for the last four weeks,
677 if you have them? You make a weekly count, do you not?

A. Approximately that. Well, on August 11th, we had 39 trips in that same period.

On August 23rd, we had 27 trips. August 31, we had 36 trips; and as I just stated, on September 8, we had 37 trips.

Q. How does that compare for the same period during the preceding month?

A. On July 30th, the figures were 41; July 22nd, 43; July 14th, 42; and July 5, 41.

Q. Go back to January of this year, if you have it there.

A. January 7th on R–2 bound to the Pentagon Building, between 8 and 8:30 a. m., 49 trips; January 25—42 trips. Those are the only two records I appear to have in January.

Q. All right. Generally speaking, what would you say, is the average on a monthly basis for the preceding six months of busses in use on that route during those hours?

Mr. DUNLOP. You mean busses in use or number of trips?

The WITNESS. Between 40 and 45. I have not actually made the computation.

678 By Col. BARRON:

Q. Now——

Mr. DUNLOP. Just a moment.

May I ask a qualifying question?

Commr. PATTESON: Proceed.

By Mr. DUNLOP:

Q. Mr. Locke, the figures you have just given are the counts for one day in the week, aren't they?

A. That is right.

Q. Then can you say with any degree of accuracy, or rather, strike that. Would those figures represent the daily average?

A. No; these are only spot figures from which I estimated to get a number average, if you please, of the figures quoted in those others that I have in mind taken in a certain manner.

Q. That would be representative, probably?

A. Yes; that is right for the particular period that is chosen.

Col. BARRON. All right.

Mr. DUNLOP. In other words, they are not selected days?

The WITNESS. No, sir.

Mr. DUNLOP. I am not criticizing you, I just want to see if the Commissioner understands the testimony.

Col. BARRON. They have allocated somewhere 90 busses to this operation on this exhibit.

My purpose here is to try to show that perhaps only 60 busses are actually used in that operation.

679 By Col. BARRON:

Q. All right, take the other route, Route Q–2, I believe it is. What are the figures for the same period? Will you start there with January and also take the last two months.

A. On January 7, 1943, the corresponding figures for Route Q–2 were 11; January 25, 10; July 5, 18; July 14, 19; July 22, 19; July 30, 21; August 11, 20; August 23, 19; August 31, 18; September 8, 18.

Q. All right. Have you taken the same, do you have the same figures of the same period for July and January of this year, you gave them on the other line?

A. I believed I quoted the corresponding figures now for both lines and simultaneous days.

Q. All right. Can you make an average for the six months' period, I mean, just a rough estimate?

A. It will take just a little while.

Q. Yes, sir. I think it would be more informative if we could get an average.

A. (After making computation.) Subject to check and assuming that my quick arithmetic is without error, it would appear that the average number of trips operated on the 29 days on which these observations were made between the hours of 8 and 8:30 are 57 on the two routes.

Q. Both routes?

A. Yes.

680 Q. That is, the morning?

A. That is just the morning period between 8 and 8:15——

Exam. MATTINGLY. Wait a minute.

The WITNESS. Between 8 and 8:30.

Exam. MATTINGLY. That includes the leaving time and the arriving time, is all within that half hour?

The WITNESS. This is the time at the Pentagon Building arriving.

I wish to say that this is not necessarily throughout the period of the calendar or the maximum number of busses in any half hour arriving at the Pentagon Building.

We started out by quoting figures in August, during August, that was the period of the morning rush during which the maximum number of busses arrived in half an hour.

Earlier in the six or seven months' period, the maximum number of busses was found in some other period due to the fact that the character of the load was changed.

However, I have, in putting these figures together, stuck to the 8 to 8:30 period throughout. Had we taken without respect to the clock the two consecutive fifteen minute periods during which the maximum number of trips were found, we might get a different figure, a figure somewhat higher than 57.

By Col. BARRON:

Q. What is the maximum number of busses in actual operation on Routes Q-2 and R-2, at any one time for the last month?

681 A. I am not able to answer that, sir; I do not know.

Q. But would——

A. We could get that by an inspection of the records and a special study, but that would be necessary in order to give you the answer.

Col. BARRON. I would like to suggest that that be secured, Mr. Commissioner.

Commr. PATTERSON. Will that information be furnished for the record?

The WITNESS. Yes; we will be glad to furnish that.

Col. BARRON. I think that a monthly average, month by month for the last six months, to show the equipment actually used would be a very representative picture.

Commr. PATTERSON. Well, you can put in the record a detail showing the actual performance, can you not, at any given period?

The WITNESS. We can submit a record which shows the number of busses arriving at the Pentagon and departing from the Pentagon by 15 minute periods which is, in fact, the record from which I have obtained these figures, if that will be of assistance.

But, might I say that these records, so far as they are concerned, the War Department is in possession of Major Ristroph, because we submitted copies, or in fact, the original of these records

682 as they are obtained. If the Commission, however——

Mr. DUNLOP. Showing the arrival time of each bus at the Pentagon Building?

The WITNESS. No, sir; the record shows the number of busses arriving by 15 minute periods without designating the identify of the individual bus.

We can, however, if the Commission desires, submit our original data which are taken by our traffic checkers.

The busses work interchangeably. The revenues are collected in the——

Mr. DUNLOP. Just a minute.

Mr. AWALT. Mr. Locke, wait just a minute, please.

Are you asking this witness to answer questions which relate to Mr. Heberle?

Col. BARRON. Mr. Heberle has offered evidence here and we are testing the accuracy of the exhibit. He has allocated 97 busses to the operations. We are trying to find out how many are actually being used.

Mr. AWALT. If I may comment, the Colonel is asking a question that might well be directed to me in explanation of it.

Col. BARRON. It was stated yesterday that he knew more about the allocation here.

Mr. HEBERLE. Colonel, I might say that I am qualified to make the explanation.

683 Commr. PATTERSON. Read the question.

(Question read.)

The WITNESS. I do not know how many are allocated to Route Q-2, which I understand the question to be——

Col. BARRON. We will save that for Mr. Heberle.

By Col. BARRON:

Q. How many trips are made, will you just give the same information there on this route as to the trips, or busses, rather, as you did for the morning hours, read it for the same days that you took before.

A. I quoted you the figures for each of the two routes in the morning.

Q. Yes.

A. Now you desire the afternoon figures similarly?

Q. Yes, sir.

A. The figures which I will quote relate to the period between 5:15 and 5:45 p. m. during which on the majority of days the maximum number of busses or trips, in other words, 30 minutes, were found.

January 7, 1943, 42 on R-2, 10 on Q-2; January 25, 40 and 15; February 2, 38 and 18; February 10, 39 and 16; February 18, 42 and 18; February 26, 51 and 28; March 8, 37 and 28;

684 March 16, 44 and 28.

March 24—oh, I am sorry. I have gone beyond the date which I covered on the other group. If I might stop there and start in in July:

July 5, 33 and 22; July 14, 29 and 26; July 22, 53 and 26; July 30, 27 and 25; August 11, 34 and 25; August 23, 30 and 28; August 31, 32 and 26; September 8, 31 and 28.

Q. All right. I am going to ask that you make the same computation as to average made with reference to the morning hours, but I do not want to take the time to do it right now. We will go ahead with the questions.

Do you know how many miles per hour a bus makes in this service on a round trip?

A. Such busses as make more than two round trips and therefore operate as long as one hour, and which have 24 minutes round trip running time, operate 17.5 miles in one hour.

By Capt. DAVIS:

Q. Now, you are familiar with that exhibit which Mr. Heberle put in yesterday, are you not?

A. Well, I have seen it, sir.

Q. Now, is it correct, so far as the books are concerned,
685 leaving aside questions of judgment, so far as you know.

A. I know nothing about that, sir; I am not qualified to state.

Q. Well, now, assuming that the wage cost of 11.31 cents per bus mile is correct as stated there, if you will apply that wage cost to the number of miles per hour, these busses go, what figure do you get?

Mr. DUNLOP. Are you asking him about wages?

Capt. DAVIS. Yes.

The WITNESS. The problem of 17½ miles per hour times your 31. cents per mile brings a mathematical product of $1.98 per hour, it appears.

By Col. BARRON:

Q. Do you know what rate per hour these civilian employees of the War Department were offered who were solicited to operate Capital Transit busses?

A. No, sir.

Q. Do you know how much you pay your bus operators per hour?

A. I believe the rate is $1.00 after they have obtained their preliminary training period, that is, after they have gotten up to the maximum rate.

Mr. AWALT. Mr. Commissioner, I think Mr. Locke's testimony on that point is wrong, in fact, I do not think he has the knowledge to answer.

Capt. DAVIS. Well, he is tendered as your witness.

Mr. DUNLOP. No.

686 Mr. HILL. No, he is not the witness at all.

Exam. MATTINGLY. Mr. Locke, do you or do you not know the answer to these questions? If you don't, just say you do not know.

Commr. PATTERSON. That is not the way for fixing wages, the miles the bus runs.

The WITNESS. I understand, but——

Commr. PATTERSON. Wage negotiation is a science in itself.

Capt. DAVIS. Well, Mr. Heberle had a lot of trouble answering questions on this subject and now we are just trying to just how it is made up.

Mr. QUIRK. I submit he did not have any trouble answering the questions, they just didn't like the answers they got from him.

The WITNESS. If I may finish this, although perhaps it is not appropriate——

Capt. DAVIS. I do not want the answer if you do not know.

The WITNESS. That pay per hour, as I understand, is based upon the new wage agreement which has not yet been approved by the War Labor Board.

By Capt. DAVIS:

Q. Do you know, if, in preparing this exhibit, Mr. Heberle took into account the new wage agreement?

A. I do not know.

687 Mr. DUNLOP. Mr. Examiner, I object.

Commr. PATTERSON. He has already answered the question.

Capt. DAVIS. I merely asked him if he knew.

By Capt. DAVIS:

Q. Mr. Locke, are you familiar with the character of depreciation on your busses?

A. No, sir.

Q. Are you an engineer?

A. Yes.

Q. Well, who in your company, knows and is best qualified to testify about bus depreciation?

A. Mr. Heberle.

Q. Is he an engineer?

A. He is not.

Q. Well, maybe you misunderstood my question.

What we want to know is who knows best about the ways in which busses depreciate and what busses depreciate more than others. I assume that is an engineering question.

A. The chief engineer of the company probably best qualified to testify as to the physical aspects of depreciation. Mr. Heberle I presume, is best qualified to testify as to the mechanics and the accounting phases of depreciation.

Q Were you present during Mr. Merrill's testimony, Mr. Locke?

A. Yes, sir.

Q. Do you recall that he was asked how much more a steel

688 body bus weighs than an aluminum body bus?

Mr. DUNLOP. No; he was not asked that question.

Capt. DAVIS. I believe he said that you were more prepared to answer that than he would be.

The WITNESS. I am not prepared.

By Capt. DAVIS:

Q. Who in your company knows about that?

A. Mr. Dalgleish, our engineer, knows more about that.

Q. Do you have any opinion as to whether a bus which runs 10,000 miles a year depreciates as rapidly as one operating 50,000 miles per year?

A. I have an opinion, but I am not——

Q Will you state what that opinion is?

A. From a physical viewpoint, the wear and tear on a bus which operates 10,000 miles a year is less than on one which operates 50,000 miles a year. There are other factors, however, which enter into the matter of the accounting for depreciation.

By Col. BARRON:

Q. How many busses does your company have that are not used currently?

A. I do not have the figures.

Q. Who would?

A. Mr. Dalgleish can testify to that.

Col. BARRON. Yes, sir.

By Capt. DAVIS:

Q. Would you say that from the physical standpoint the amount of depreciation is roughly in proportion to the amount of use?

689 A. Well, I do not think that I am qualified to speak, sir.

Q. And have you recently loaded your busses more heavily than the single month's average?

A. Well, during the period of war emergency, we have carried heavier average loads, passenger loads, than we formerly did.

Q. Now, going back to these negotiations for the original Pentagon line, did your original 5 cent far proposal contemplate a loop bus line traversing the Memorial and 14th Street Bridges, which would allow a 5 cent ride to any point on this loop, if you know?

A. I am not prepared to state, sir.

Q. Who would know that among your officials?

A. Mr. Merrill is best qualified to answer that question.

Q. I was under the impression Mr. Merrill referred us to you on that.

Mr. DUNLOP. Mr. Merrill did not refer to Mr. Locke for any negotiations with the War Department.

Col. BARRON. I think that is correct.

By Capt. DAVIS:

Q. Do you know what the average length of ride of a passenger, including transfer rides, is on your system?

A. No.

Q. Is there any one who would know better than you on that?

A. I believe none of us know.

Q. You have never attempted to compute that or to esti-
690 mate it?

A. No, sir.

Q. Do you know how much farther into the District the Q-2 line extends than the R-2 line?

A. Yes; that is if I make certain assumptions as to where the District line is.

Q. Well, then, will you say what your estimates are?

Commr. PATTERSON. Well, the District line would be in the same place wouldn't it?

The WITNESS. There is a good deal of——

Commr. PATTERSON. Whatever the assumption may be it would leave it in the same place?

Capt. DAVIS. Assuming it is at the 1791 high water mark.

The WITNESS. My estimates do not run that way. My assumption is that the D. C. line is at the southern edge of the boundary channel.

Memorial Highway on Route R-2, in the case of extension of Route R-2 into the District, is 1.62 miles for that one way distance.

With respect to Route Q-2 over the Highway Bridge, the same figure is 2.08.

Assuming that the south end of the Highway Bridge is the District Line——

By Capt. DAVIS:

Q. You have not computed it from the 1791 boundary, have you?

691 A. I have not.

Col. BARRON. We have a number of personnel witnesses that we would like to put on, it will take only a few minutes.

Mr. WHITTLESEY. Pardon me, Mr. Commissioner, will you indulge me one question before Mr. Locke gets off the stand?

I call your attention to Exhibit 15, page 2, from district 9899 passengers to district 8586.

Has it been your experience that you could carry that many passenger with 57 busses?

The WITNESS. No, it takes a great many more busses if you mean by busses, trips.

Mr. WHITTLESEY. That is what I mean. Trips.

That is all.

Lt. MATHEWS. I have a question.

Commr. PATTERSON. Go ahead.

By Lt. MATHEWS:

Q. Mr. Locke, in stating that the average number of busses used between 8 and 8:30 would be 57, you suggested that at some time or other the figure would be higher if you used another period. When would that be?

A. In the first place, in answering let me state that there may be some misconception when we talk about busses and trips. All the figures I have given you mean trips.

Q. I mean trips.

Exam. MATTINGLY. Well, then, do some of these busses
692 make a round trip during the rush hour and make more than one trip?

The WITNESS. Yes, sir; there are definitely a number of busses making as many as two trips in an hour at the terminal. Of course, in a half hour they would not, because the round trips takes 24 minutes.

Exam. MATTINGLY. I mean some of these figures you have given as to trips may include the use of one bus twice, is that right?

The WITNESS. No, because of the figures I referred to are within one half hour, so that there would not be a second trip of any individual bus during that period.

Exam. MATTINGLY. But in connection with your exhibits, one of your exhibits there, the figures you used were three quarters of an hour?

The WITNESS. I did not intend to.

Exam. MATTINGLY. 5:15 to 5:45, say, three trips represent separate busses.

The WITNESS. In this particular case, but in some cases we might get confused if we talked about busses when we mean trips. Would you repeat the original question?

(Question read as follows:

"Q. Mr. Locke, in stating that the average number of busses
693 used between 8 and 8:30 would be 57, you suggested that at some time or other the figure would be higher if you used another period. When would that be?")

The WITNESS. Well, just as one example, if I can pick out, on January 7, 1943, I quoted 42 trips on Route R-2 between 5:15 and 5:45. If I took the number between 5:00 and 5:30 on that day, we would have a total of 46.

By Lt. MATHEWS:

Q. All right. Then in the morning of that day you had that many?

A. In the morning of that particular day the figures quoted were, I believe, 49. It happens that that is the maximum number in any of our periods in the morning.

Q. All right. Then when you add this 46 on R–2 between 5:00 and 5:30, how many do you have on the Q–2 route within that same period, how many trips?

A. Nine.

Q. Nine?

A. Yes, and I quoted 10 for the other period.

Q. And so the totals are, you have not given us the average for the afternoon, but the total there is 55 for the two in that same period?

A. That is right.

Q. Now, do you find any days where the hour 8:00 to 8:30 is not the highest hour?

A. Yes; on February 2nd.

Q. February 2nd. What time was the time you had the highest?

694 A. Might I state that the first February 2nd figures were not included in the set of figures that I originally quoted. As I quoted only January figures and then jumped to July.

Q. That is quite all right. I just wanted to find out. You said that there would be some difference. I just wanted to find out what that amounted to.

A. May I state that from time to time the half hour period during which the maximum number of trips is operated varies from day to day and from period to period and only by writing these all out in a table would we at all able to ascertain the cyclic fluctuations in the maximum periods.

Q. Well, you said February 2nd, 8:00 to what; what time was that?

A. 8:15 to 8:45.

Q. How many was that?

A. 42.

Q. 42?

A. That is right.

Q. And how many on Q–2?

A. 13.

Q. 13. That gives us 55 for a total?

A. That is right.

Q. And that is less than the average. Can you find any times that will make the total of those two routes in any half hour

period more than 57 because of the half hour periods
695 being different?

A. That is quite an assignment.

Q. All I want to do, just want you to indicate that there might be—you indicated that there might be a substantial difference if you used another period than 8:00 to 8:30 some of those days, and I am under the impression that any difference would be very little.

A. I will agree with you on that, sir. There will be some difference, I simply wanted to indicate that these were not in all instances the maximum.

Q. 57 then would be about right for any day in your maximum period?

A. I believe so.

Lt. MATHEWS. All right. That is all.

Commr. PATTERSON. You are excused.

Mr. WHITTLESEY. I have some cross-examination, sir, but I understand he is coming back later.

Col. BARRON. Thank you.

Mr. DUNLOP. Mr. Examiner, I also reserve any questions I may have until later.

May I ask, Colonel, if he is going to put Mr. Heberle back on the stand?

Col. BARRON. Yes.

(Witness temporarily excused.)

Capt. DAVIS. Miss Peltier.

696 VALERIE C. PELTIER was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name and position, please?

A. Valerie C. Peltier; I am clerk-typist in the Ordnance Division.

Q. What is your position?

A. Clerk-typist.

Q. Where do you work?

A. Field Service, physician's supply branch.

Q. Are you in the Pentagon Building?

A. Yes, sir.

Q. How long have you worked for the War Department?

A. It is just six months today since I came to the Pentagon.

Q. How do you go to work each day, just very briefly.

A. Well, usually I take a bus on 16th Street which takes me down to, well, I think it is 21st and C, and then I take a Pentagon bus.

Q. And you come back the same way?

A. No, no; I don't.

Q. You take a Pentagon bus back?
A. Yes, I do.
Q. Is that a Q–2 bus?
A. Yes.
697 Q. And how much do you pay for transportation each day?
A. Ten cents.
Q. Bus fee?
A. Five cents each way.
Q. In addition, do you buy a weekly pass?
A. Yes, sir.
Q. Do you feel that the bus transportation is too high?
A. Well, I do feel $7.50 is quite a bit to pay for transportation.
Capt. DAVIS. That is all.
Mr. DUNLOP. Mr. Chairman, I would like to know, I think we would all like to know if that is going to be the basis for the fixing of rate.
Commr. PATTERSON. You can argue that.
Capt. DAVIS. I believe it is a matter that the Commissin should consider.
Mr. QUIRK. If you ask them they all probably feel that way.
Mr. HILL. Mr. Commissioner, may I ask the witness just one question, I didn't realize that the Captain had concluded.
Mr. QUIRK. Mr. Commissioner, I made a comment in jest, but I make it in all seriousness, that any number of witnesses of this type they bring in here probably feel the way this witness says she feels.
Commr. PATTERSON. I was just going to ask you if it is
698 going to be cumulative testimony, it perhaps can be stipulated that you have a certain number of witnesses that will testify to substantially the same effect.
Mr. HILL. I would like to ask the witness a couple of questions.
Commr. PATTERSON. Will you bring the witness back? Mr. Hill has arrived——
Col. BARRON. We have a petition of several thousand, with several thousand names of it. Will they stipulate as to that, that they would give similar testimony?
Mr. DUNLOP. That they all feel the same?
Col. BARRON. Yes.
Mr. WHITTLESEY. I would like to hear from one that rides on the bus of the W. B. and M. Coach Company, if I may, sir.
Commr. PATTERSON. You may proceed, Mr. Hill.

Cross-examination by Mr. HILL:

Q. Miss Peltier, did you fill out a questionnaire submitted to you by the War Department at one time?

A. Yes, I did; last May.
Q. You did. Do you belong to the CIO?
A. No, I don't.
Q. You do not?
A. No, sir.
Mr. HILL. That is all.

Redirect examination by Capt. DAVIS:

699 Q. While you are there, would you state for the record what your base salary is, if you do not mind?

Mr. HILL. Mr. Commissioner, we object to that as we did to the exhibits.

Commr. PATTERSON. You may answer if you know.

The WITNESS. $1,440.

Exam. MATTINGLY. Did you say where you live?

The WITNESS. 1749 Q. Street North West.

Mr. HILL. Now, are you testifying as to your base salary as distinguished from what you receive, the pay you receive; is there a difference?

The WITNESS. Yes, there is.

Mr. HILL. I just didn't want you to get confused.

The WITNESS. Well, that is what I was hired at.

Commr. PATTERSON. At $1,440?

The WITNESS. Yes, sir.

Commr. PATTERSON. Do you receive more than that?

The WITNESS. Yes, I do. I came here just before the raise.

Capt. DAVIS. Is that all?

Mr. HILL. Yes.

Capt. DAVIS. Thank you very much.

(Witness excused.)

Capt. DAVIS. Miss Wiggins, please.

MARGIE H. WIGGINS was sworn and testified as follows:

Direct examination by Capt. DAVIS:

700 Q. Will you state your name, please?
A. Margie H. Wiggins.
Q. Where do you live?
A. 1707 Lamont Street.
Q. What is your position with the War Department?
A. Assistant clerk.
Q. And what is your base salary?
A. $1,620.
Q. How long have you worked for the War Department?
A. About eighteen months.
Q. And how do you go to work in the morning?

A. I take a Capital Transit streetcar to Mt. Pleasant and ride down to 19th and C and transfer.

Q. And is there any reason why you do not take the 16th Street bus?

A. No reason; the streetcar is a little more convenient than the bus.

Q. You take the Capital Transit bus going to and from the Pentagon across the river both ways?

A. Yes, sir; that is while I am on day shift.

Q. Now, what bus do you take when you are on the other shift?

A. Well, the Virginia Bus.

Q. And what is the fare on that bus?

701 A. Ten cents, each way.

Q. So that when you are on the evening or night shift you pay 20 cents a day?

A. That is right.

Q. And on the other one 10 cents a day?

A. Yes, sir; plus the Capital Transit bus.

Q. Do you feel that these fares are too high?

A. Yes.

Capt. DAVIS. That is all. Let the other lawyers ask the questions.

Cross-examination by Mr. LANE:

Q. Well, just a moment. What Virginia bus did you say you took?

A. I think it is the red one, the Arlington and Fairfax, I think, is the name of it.

Q. Where do you get off the bus?

A. In the Pentagon Building.

Q. Where do you get off the bus in Washington?

A. Twelfth and Pennsylvania.

Q. Well, directly on the corner of 12th and Pennsylvania Avenue or across the street?

A. Directly on the corner.

Q. In front of the old Post Office?

A. That is right.

Q. You testified that you paid 10 cents to Capital Transit

702 each morning to go down to 19th and C?

A. No, no.

Commr. PATTERSON. No.

The WITNESS. The pass.

By Mr. LANE:

Q. You use a weekly pass?

A. Yes.

Q. Did you sign a questionnaire?

A. Yes.

Q. Do you belong to the C. I. O.?

A. No.

Q. Where did you live before you went to work in the War Department?

A. You mean here in Washington?

Q. Well, did you live outside Washington or in Washington?

A. In Washington; same place.

Q. Did you work any other place prior to going to work in the War Department?

A. Yes; I used to work at Southwest 2nd and B Street, Washington.

Q. Southwest 2nd and B?

A. Yes.

Q. Southwest; what kind of business is that?

A. Same that I am doing now.

Q. What is it, Government work?

A. That is right.

703 Q. You have always been employed by the Government since you went to work?

A. No.

Q. You have never lived outside of Washington; been employed outside of Washington?

A. Not before going over to the Pentagon Building.

Q. Well, have you been employed outside of Washington since then?

A. No.

Exam. MATTINGLY. She is employed outside of Washington right now.

Mr. LANE. Oh; I beg your pardon.

Exam. MATTINGLY. It is the place where your bus runs.

Mr. LANE. Perhaps I am arguing the War Department's case. That is all.

By Mr. QUIRK:

Q. Did you receive a handbill recently?

A. A handbill?

Q. Yes.

A. No; I don't believe so.

Q. Suggesting you call the Commission on the telephone or telegraph?

A. Oh, yes.

Q. Did you telephone?

A. I didn't telephone, but I did write a letter.

704 Q. You wrote a letter, did you?

A. Yes.

Q. Did you get an answer?
A. No.
Mr. QUIRK. That is all.
Exam. MATTINGLY. Any other questions?
Capt. DAVIS. That is all.
Exam. MATTINGLY. You are excused.
(Witness excused.)
Capt. DAVIS. Thank you very much. Mr. Jones, please.

CLIFTON GASSAWAY JONES was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name, please?
A. Clifton Gassaway Jones.
Q. Where do you live?
A. I live 2141 Ninth Street North West.
Q. How long have you worked for the War Department?
A. Just about a year.
Q. And would you mind telling us what your base salary is?
A. I make $1,320 a year.
Q. Do you have a wife and child?
A. Yes, I do.
Q. Do they work?
705 A. No; my wife is unable to work.
Q. Now, how do you go to work in the morning?
A. I catch the Georgia Avenue car and ride down to Seventh and Constitution Avenue, and there I catch the Q-2 bus.
Q. And do you go back the same way?
A. Yes.
Mr. DUNLOP. You mean streetcar?
The WITNESS. Yes; the streetcar.

By Capt. DAVIS:

Q. And do you use a weekly pass?
A. Yes; I do.
Q. So that your total transportation pass is your weekly pass plus 10 cents a day?
A. Plus ten cents a day.
Q. And do you feel that your present fare under which you have to pay an extra fare and pay for a pass, too high and represent a disproportion of your income?
A. Yes; and sometimes when we work night shifts, why, I use the Virginia bus at night.
Q. How much do you have to pay on that?
A. Have to pay 10 cents extra on the bus.
Q. So when you work night shift you have to pay 20 cents a day plus your fares?

A. I do.

Capt. DAVIS. Your witness.

Commr. PATTERSON. You are excused.

706 Capt. DAVIS. Thank you very much.

(Witness excused.)

Capt. DAVIS. Mrs. Crist, please.

Commr. PATTERSON. Colonel Barron, could you stipulate the rest of these?

Col. BARRON. Yes; if they will stipulate that several thousand others are of the same view and would testify to the same effect, we would be delighted to stipulate.

Mr. LANE. We will stipulate that all that are here will so testify.

Mr. HILL. We will stipulate that all that are here won't make more than $1,620 base pay, probably.

Commr. PATTERSON. All right, put on your witness.

Mrs. DORIS D. CRIST was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name, please?

A. Doris D. Crist.

Q. And——

Mr. LANE. Is that C-r-i-s-t?

The WITNESS. That is right.

Exam. MATTINGLY. I didn't get it yet.

The WITNESS. C-r-i-s-t.

By Capt. DAVIS:

Q. Your address, please?

A. 513 Longfellow North West.

707 Q. How long have you worked for the War Department, Mrs. Crist?

A. Since January.

Q. And would you mind telling us what your base salary is?

A. $1,620.

Q. And will you tell us how you go to work in the morning, Mrs. Crist?

A. I get the Q-1 bus, I believe, that comes to 13th and Pennsylvania Avenue, and I transfer at Sheridan Circle, and get a D-1 Potomac Park and go down to 21st and C, and come over on the 5-cent bus.

Q. That is the Capital Transit Bus?

A. That is right.

Q. Then how do you go back in the evening?

A. I take the 12th and Pennsylvania Bus back, I believe it is the Virginia bus, and then take off 13th Street and take the 5th and Sheridan bus home.

Q. That is the bus marked A. B. and W., that Virginia bus, is it not?

A. I really do not know.

Q. And you pay 10 cents a day back on that?

A. That is right.

Q. Why do you take that one back instead of the Capital Transit bus?

A. Because I—the bus I ride in in the morning, I don't
708 think, runs about every half an hour at the time I get off and when I get over here I just miss one and have to wait a half an hour for the next one.

Q. In other words, your hours are such that you make better time the other way?

A. Yes; and too many people are trying to get on the bus when I get there.

Q. So that your cost of transportation is 15 cents a day, plus your weekly pass?

A. That is right.

Q. Do you feel that your bus fares are too high and represent a disproportionate share of your income?

A. Yes, sir.

Capt. DAVIS. Your witness.

Cross-examination by Mr. AWALT:

Q. I would like to ask, is this your first work?

A. No, sir.

Q. Where did you work before?

A. For the Telephone Company.

Q. What were you paid there?

A. I really don't know; I don't remember.

Q. You mean you have forgotten since January?

A. That is right.

Q. You got an increase when you went to the War De-
709 partment, did you?

A. Yes, sir.

Q. How much?

A. Oh, I would say around five or a little bit over a week; $5.00 more.

Q. On your base salary?

A. No; on what I really get; not on my base salary.

By Mr. HILL:

Q. Are you from North Carolina?

A. No, sir.

Q. South Carolina?

A. No, sir.

Q. Where?

A. Virginia.

Capt. DAVIS. Any more questions?

Mr. WHITTLESEY. Yes; I have a question.

By Mr. WHITTLESEY:

Q. Your total salary now is almost $2,000 a year, isn't it; your gross salary?

A. Practically; yes, sir.

Q. And after the deduction for retirement and income tax and war bonds, you still make $5.00 per week more than you made at the telephone company; is that it?

A. Well, if I would still be at the telephone company now I would make more now than I did then.

Q. I know, but that is just on the salary you made, you still make five dollars a week more now after all these deductions are paid than when you worked for the telephone company; is that your statement?

710

A. I really don't know that.

Mr. WHITTLESEY. All right. That is all.

Commr. PATTERSON. Do you know how much you take home?

The WITNESS. It isn't enough.

Mr. LANE. Do you think the War Department should give you an increase in pay?

The WITNESS. I am hoping to get an increase.

By Mr. LANE:

Q. You believe that the War Department employees are underpaid, don't you?

A. I really don't know.

Capt. DAVIS. Any further questions? Thank you very much, Mrs. Crist.

The WITNESS. You are welcome.

(Witness excused.)

Mr. LANE. Well, I think we can stipulate that Captain Davis will testify.

Capt. DAVIS. Miss Silcott.

BETTY JANE SILCOTT was sworn and testified as follows:

Direct examination by CAPT. DAVIS:

Q. Will you state your name, please, for the record?

711

A. Betty Jane Silcott.

Q. Where do you live, Miss Silcott?

A. 102 P Street North East.

Q. How long have you worked for the War Department?

A. Since March.

Q. Would you mind telling the Commissioner, for the record, what you pay salary is?

A. $1,440.

Q. That is per year?

A. Yes.

Q. Now, are you working at the Pentagon Building?

A. Yes, sir.

Q. And how do you go to work at the Pentagon Building in the morning?

A. Cabin John Street car down to 7th and Constitution and walk down two blocks and catch the 7th and Constitution Pentagon bus, Q–2.

Q. Then how do you go back in the afternoon?

A. Take a Q–2 Pentagon bus to 7th and Constitution and I walk home.

Q. You use a weekly pass?

A. I do.

Q. And in addition to paying for the pass, you pay 5 cents, or a total of 10 cents per day?

A. Yes, sir.

712 Q. Do you feel that fare is too high and represents too high a share of your income?

The WITNESS. Would Your Honor permit me to ask a question?

Commr. PATTERSON. Ask the question.

The WITNESS. I cannot understand why you can ride all over the District on a pass and still when you just go across the river you have to pay a nickel extra; I don't know.

Commr. PATTERSON. You don't have the right kind of a pass, I suppose.

The WITNESS. Yes; but you go just as far.

By Capt. DAVIS:

Q. So you feel it would be much more fair and reasonable if your pass was good for all the Capital Transit Company busses over to the Pentagon that you have to use every day?

A. Yes; if you go just as far on other days. I don't see why to cross the river you should pay extra.

Mr. QUIRK. Would you like to go to Baltimore on your pass?

The WITNESS. No, sir.

By Capt. DAVIS:

Q. You do not have to go over there every day to work, do you?

A. No.

Mr. AWALT. You have been working for the War Department, I understand, six months?

The WITNESS. That is right.

Mr. AWALT. Where did you work before that?

713 The WITNESS. I never had a position before.

By Capt. DAVIS:

Q. You always lived in Washington?

A. No, sir; Clarksburg, West Virginia.

Col. BARRON. You are excused.

Commr. PATTERSON. That is all.

(Witness excused.)

Capt. DAVIS. We have a lot more employees here and on call. However, we feel this is a representative group so far, and we are glad to call any others, though.

Mr. WHITTLESEY. May I comment, Colonel, I do not think it is a representative group because they haven't called any from our company yet.

Capt. DAVIS. Well, yours is a relatively small company.

Mr. WHITTLESEY That is the reason that I think it would be very easy to pick out one of these thirty-three they got from our company.

Commr. PATTERSON. Off the record.

(Discussion off the record.)

Commr. PATTERSON. I think this is a good point to take about a ten-minute recess.

(A short recess was taken.)

Commr. PATTERSON. Proceed.

Capt. DAVIS. Miss Thompson, please.

RUTH THOMPSON was sworn and testified as follows:

714 Direct examination by Capt. DAVIS:

Q. Will you give your name for the record, please?

A. Ruth Thompson.

Q. And what is your position, Miss Thompson?

A. Employee counselor.

Q. In what office?

A. Adjutant General's Office.

Q. In the Pentagon Building?

A. War Department.

Q. And briefly, what are your duties, Miss Thompson?

A. All of the new employees coming into the office for induction interviews, and during the time of service they come to us to have us assist them in any problems that may arise. And when they leave or are ready to leave, they come in for exit interviews.

Q. And you do all the interviewing yourself, Miss Thompson?

A. No, sir.

Q. How many people do you have doing that?

A. Six.

Q. You do some yourself and the rest is done under your supervision?

A. Yes, sir.

Q. Now, do you receive a lot of complaints about the
715 transportation service to the Pentagon and particularly the high cost of it?

A. We receive some.

Q. Can you elaborate on that a little more, tell us what kind of complaints you get, and how many you get, roughly?

A. From the new inductees we frequently get the request that they be allowed or that they be assigned to the Munitions Building rather than to the Pentagon Building in order to avoid the additional cost of transportation. And we have some people who leave because, one of the contributing factors, is the transportation problem; the expense.

Q. Now, do you supervise or make out yourself these so-called exit interview reports?

A. Not all of them. I try to see as many of the people who are leaving as I can, but it is not always possible to see all of them.

Q. You are familiar with the form, are you?

A. Yes, sir.

Q. In each case when that is filled out, you attempt to put down one outstanding one rather than to indicate all of the different factors, don't you?

A. Yes, sir.

Q. So that, would you say that the particular reports resulting from those forms were representative or accurate insofar as they reflect transportation as the cause of leaving?

716 A. I would think so.

Mr. WHITTLESEY. Is the purpose of this question to impugn the records of the Government?

Capt. DAVIS. Not a bit, sir; merely to explain some of the questions that were asked Dr. Franklin, who was not familiar with how these interviews were had, and to testify to the obvious fact that those do not necessarily reflect the true facts as to the transportation problem.

Mr. WHITTLESEY. So that you are saying now that this witness is going to testify as to facts which are true facts and are different from these statistical records; is that correct?

Capt. DAVIS. No, it is not, but simply to explain that the statistical records do not show the whole story; may not necessarily show the correct story.

Mr. LANE. If I may suggest, could not the witness testify instead of Captain Davis?

Capt. DAVIS. I admit that some of these questions are leading, but I have merely been trying to save time.

Mr. QUIRK. All right, ask your questions rather than tell the witness what you want for an answer.

By Capt. DAVIS:

Q. Miss Thompson, are you familiar with the forms used for these exit interviews?

A. Yes, sir.

Q. Does that contain a line showing the transportation—

717 A. I think it does. I would not say positively—I would not be positive about that.

Q. Well, now, in a lot of these cases, or is it a fact that a great many employees——

Capt. DAVIS. Strike that, please, sir.

By Capt. DAVIS:

Q. Is transportation one of the principal causes of complaint?

A. Transportation is a cause of complaint in a great many instances, but it is not always reflected in the exit interview because the average employee does not give the real reason for leaving the War Department.

Q. From your general knowledge of the subject, do you believe that the high cost of transportation——

Mr. LANE. Just a minute. That is exactly the question that I am objecting to.

Mr. QUIRK. This witness has shown herself to be very honest. You just don't like the qualified answers, and you are trying to put into her mouth answers that she doesn't want to voluntarily make. That is not proper.

Mr. HILL. Let Miss Thompson——

Mr. QUIRK. Wouldn't even allow that on the Take-It or Leave-It hour.

Capt. DAVIS. Off the record. Miss Thompson is also a lawyer and a former judge, and it may be she would be more qualified than I am.

718 Mr. QUIRK. I think she is perfectly qualified; I think she was asked to tell what——

Mr. HILL. I think you have fairly well advertised your qualifications as a witness, I am sure of that.

Commr. PATTERSON. All right, let's proceed.

Capt. DAVIS. Back on the record now.

By Capt. DAVIS:

Q. Miss Thompson, can you tell us about some of the complaints you have, without going into too much detail, by employees about the high cost of transportation?

A. We have complaints in regard to the distance of transportation, and in regard to the confusion on transportation routes, and in regard to the crowded conditions on the several busses, and also the expenses involved.

Q. Do you have occasion to make up budgets for employees frequently?

A. We assist them in making budgets.

Q. And what do you find with reference to transportation in such budgets?

A. Well, we include the cost of transportation.

Q. And from your knowledge of budget making, do you have an opinion as to whether the transportation cost is too high? I am really asking for her opinion.

Mr. QUIRK. This witness has given you a perfect answer, and now you keep emphasizing transportation.

Capt. DAVIS. Well, that is the purpose.

719 Mr. QUIRK. Out of five reasons she gave the cost of transportation last.

Capt. DAVIS. She didn't say it was last.

Mr. QUIRK. Well, you certainly know it.

Capt. DAVIS. Will you read the pending question?

(Question read.)

Mr. LANE. We object to the question on the ground that it is leading.

Commr. PATTERSON. The witness may answer the question.

The WITNESS. I do not know from my own knowledge because I do not have to ride the streetcars and I can only answer from the information that has been given to me by employees.

By Capt. DAVIS:

Q. Well, will you give us what answer you can on the busses on that basis?

A. I only have to pay a 5-cent shuttle bus fare and that, of course, is not excessive, so far as I am concerned.

Q. No; I was thinking about——

Commr. PATTERSON. Well, she has given you her own opinion.

The WITNESS. I pay just the one fare. I happen to live at 23rd and I Street and I walk down to the shuttle bus and take the shuttle across the river for a five-cent fare.

By Capt. DAVIS:

Q. Well, now, in making up these budgets for the low-paid employees, do you have some difficulty sometimes because of the high cost of living?

A. It does enter into the high cost of living.

720 Q. Do you feel that the high cost of transportation is a material factor in the morale of the War Department employees?

A. It is a factor.

Q. Do you make loans to employees in small amounts?

A. We do.

Q. What is one of the causes of some of those loans?

A. Transportation.

Mr. QUIRK. How does that rank with the other causes?

The WITNESS. We have only a very small fund, an activities fund, which we have from employ' activities, and we can only make small loans and they come to us for the real small loans and go to the Credit Union for the larger loans.

Mr. QUIRK. For example?

The WITNESS. From 2 to 5, sometimes 10.

Mr. WHITTLESEY. Just enough to tide them over until the next pay period?

The WITNESS. That is right.

Capt. DAVIS. To enable them to pay their bus fares. Your witness.

Mr. HILL. Any of them borrow money so they can eat until the next pay day?

The WITNESS. Yes, sir.

Mr. HILL. That is more important than riding even, isn't it?

Mr. WHITTLESEY. Oh, no.

721 The WITNESS. They are both important.

Commr. PATTERSON. Are there any other questions of this witness?

Mr. QUIRK. No questions.

Commr. PATTERSON. You are excused.

(Witness excused.)

Capt. DAVIS. Miss Swanson, please.

RUBY F. SWANSON was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your name for the record, please?

A. Ruby F. Swanson.

Q. Talk a little louder please, Miss Swanson.

A. Yes.

Q. What is your position with the War Department?

A. I am a counselor for the employees in headquarters, Army Service Forces.

Q. Are you located in the Pentagon Building?

A. Yes.

Q. Do you interview employees when they are employed by the War Department or when they leave the War Department?

A. Yes, sir; we do.

Q. Do you do all the interviewing yourself?

A. No, I do not; I have three assistants.

722 Q. Do they work under your supervision?

A. Yes, they do.

Q. Do they report to you generally what they find?

A. Yes.

Q. Can you tell us what the principal causes are for employees leaving the service?

A. Well, there are a lot of causes and so many factors that contribute to it that it is hard to say any particular thing, they want to go back home; living cost in Washington.

Mr. QUIRK. Very disappointed.

By Capt. DAVIS:

Q. Is the high cost of transportation to the Pentagon a frequent cause of complaint?

A. Well, I would say it is a very—often we have people say that people that live in the District, and then they buy their passes, and they pay the extra fare, and it is often mentioned, we have employees coming in and talking about all sorts of things, they mention the high cost of living, they mention transportation. Some of our people would like to live at Arlington Farms so they can walk to work.

Mr. AWALT. May I understand the answer to the question, that they were leaving because of transportation, or that they just complained about it?

Capt. DAVIS. As you like.

The WITNESS. I was answering the reason why people leave in general. I would not say that they leave because of

723 transportation.

Mr. AWALT. Would you say they——

The WITNESS. Continuing. I would say that it is a contributing factor but not the main reason for their leaving.

By Capt. DAVIS:

Q. So that these reports that are submitted to higher authorities on which some statistics may be based, would not necessarily reflect the extent to which that was a factor?

A. Well, it would be included, I think, in high living cost.

Q. It might not be inserted as such, though?

A. No; I would not think so.

Q. Now, regarding employees who stay on at the Pentagon and do not necessarily leave the War Department, do you have frequent occasion to interview them?

A. Yes, we do.

Q. Regarding their problems?

A. Yes, we do.

Q. Do they ever mention the transportation problem?

A. Yes; very often they do.

Q. What sort of things do they say?

A. Mostly they want to transfer over to the Arlington Farms Building so that they can walk to work; so they do not have to pay an extra fare and some of them want to be assigned to the Munitions Building.

724 Cross-examination by Mr. AWALT:

Q. These people you are talking about now, when they work in the District, do they also talk about the time to get to the office?

A. Yes, they do.

Q. Not merely the fare?

A. They mention both.

By Mr. HILL:

Q. They also mention having to transfer in the rain?

A. I haven't heard that for a long time.

Q. Oh, I don't mean in the past three months, but before that you have heard it, haven't you?

A. Yes; I think so.

Q. And the crowded condition of the busses and streetcars?

A. Yes.

Q. When these persons sever their connection with the War Department, there is no real reason why they should conceal the fact of the cause of their leaving, is there?

A. I wouldn't say so.

Q. Domestic difficulties, marital difficulties, things of that sort; trying to conceal that from you?

A. Well, I suppose so.

Q. Troubles with their roommates; things of that sort?

A. I suppose there are different factors.

Q. They are much more apt to conceal the fact than if it cost them more money than they liked to pay?

725 A. Well, I suppose.

Commr. PATTERSON. Any other questions of the witness?

Re-cross-examination by Mr. AWALT:

Q. When these people come to you for exit interviews, you try to persuade them to stay?

A. Many times we do.

Q. Does the type or extent of your persuasion depend upon the reasons they give for leaving?

A. Not necessarily.

Re-cross-examination by Mr. AWALT:

Q. The extent of your persuasion would depend very largely on their efficiency and desirability as employees, would it not?

A. I would think so; yes.

By Mr. HILL:

Q. May I ask, do you know anything about an order that was put out or the order reducing the personnel 15 percent?

A. I do not think I can answer that question. I do not know anything about that.

Commr. PATTERSON. If there are no other questions you are excused.

Mr. WHITTLESEY. I have a question.

Commr. PATTERSON. Very well.

By Mr. WHITTLESEY:

Q. Did you prepare these exist reports, or do you?

726 A. Yes, sir; I do.

Q. Do you also compile them?

A. Yes; some.

Q. So that you show 10 people have this reason——

A. Yes.

Q. 25 have this, and so forth, and so on?

A. We do not do that in our office; that is done in the central personnel.

Q. You do complete these exit reports and turn them over?

A. Yes.

Q. Every day or every week?

A. At the end of the month.

Q. At the end of the month?

A. Yes.

Q. And as supervisor, I presume that you review these reports that are received by you?

A. Yes, sir.

Q. And your other members?

A. Yes, sir.

Q. And when those are turned over to the central office, would you say that those do or do not fairly represent the results of your labors?

A. Well, I think the monthly report does represent——
Q. Would be a fair picture of the work that you have done, you and your employees?
727 A. Well, just in that particular phase of it.
Q. That is what I mean.
A. Yes, it does, and the reports sent out by the Secretary of War every month.
Mr. Whittlesey. That is all.
Commr. Patterson. You are excused.
(Witness excused.)
Capt. Davis. Captain Slight, please.

Captain Russell W. Slight was sworn and testified as follows:

Direct examination by Capt. Davis:

Q. Will you state your name, title, and position?
A. Russell W. Slight, Captain, Civilian Personnel Officer——
Mr. Hill. How is that spelled, Captain?
The Witness. S-l-i-g-h-t—for Air Transport Command.

By Capt. Davis:

Q. Where are you stationed, Captain Slight?
A. Gravelly Point.
Q. That is in the Army Air Force Annex, there?
A. Right.
Q. Now, generally speaking, what are your duties?
A. I am in charge of civilian personnel for Air Transport.
Q. And how many employees does Air Transport now have, approximately?
728 A. Approximately 450 here in Washington.
Q. And they are all stationed at the Air Force Annex, Gravelly Point?
A. That is right.
Q. Do you conduct any of the inducting or exit interviews yourself?
A. When my counselor feels that she has not gained all the information she needs, she passes on to me and then I do get in on it.
Q. And you supervise the people who conduct the interviews?
A. Right.
Q. And do you receive reports from them as to what they find out and so on?
A. I receive a weekly report.
Q. And do you confer with them frequently so that you are familiar with what is doing?
A. Right.

Q. Now, can you tell us some of the principal causes for dissatisfaction with the place out there and for resignation of employees; the dissatisfaction with employment.

A. As to complaints, well, before they reach the stage of wanting to resign, runs into one of the factors of transportation; cost of it. That is one of the two factors for dissatisfaction and finally turning in their resignation.

I have had a lot of verbal personal complaints on the
729 transportation problem.

Q. And do those complaints concern themselves particularly with the high cost of getting to Gravelly Point?

A. Well, it goes further than just the high cost; there is also the number of changes that they have to make, location, crowded busses, and so forth. They also mention cost.

Capt. DAVIS: Your witness.

Cross-examination by Mr. QUIRK:

Q. Isn't it a fact, Captain, that the interviews you have and your assistants have generally bring out that there are quite a number of reasons besides transportation when anybody leaves or complains of their employment?

A. From the complaint side, my particular group, they run invariably in their conversation, into the transportation problem. It is one of the factors, it is not the main factor; I mean, it is not the whole factor.

Q. That has to do more with the physical aspect of transportation, than cost, does it not?

A. No; they always mention the cost of transportation.

Q. They mention that incidentally?

A. I do not know that you can consider any one of those things incidental.

Q. Well, you say that they do mention it in connection with their other complaints.

A. And the transportation side, it is always brought up.

730 Mr. QUIRK. All right.

By Mr. AWALT:

Q. Captain, as personnel officer, in the last six months, have you ever received any instructions that the personnel of the War Department are to be cut 10, 12 percent?

A. No; not my branch.

Q. You have not received such instructions?

A. I have not received such instructions; as a matter of fact we are understaffed.

Capt. DAVIS. Any further questions?

Commr. PATTERSON. You are excused, Captain.
(Witness excused.)
Capt. DAVIS. Miss Newman, please.

LOUISE M. NEWMAN was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Will you state your position with the War Department?
A. I am Chief of the Personal Relations Branch with Army Air Forces.
Q. State your name for the record.
A. Louise Newman.
Q. Where are you stationed, Miss Newman?
A. Gravelly Point.
Q. In the Army Air Force Annex, there?
731 A. That is right.
Q. And will you state, just briefly, what you duties are.
A. Well, they are a little more general than counseling. I would say that after we have enticed people to come out there across the river and to work, it is my job to keep them there and that means working with them from the first few weeks after they are inducted, occasionally, and then see them at the time they go.
Q. Do you conduct all the interviews with them as they come in your staff?
A. No.
Q. How many people do that?
A. One.
Q. And is that under your supervision?
A. That is right.
Q. How about the exit interviews?
A. I should say I do the minor portion of the exit interviewing; I have two people who do that.
Q. Is that done under your supervision?
A. That is right.
Q. Will you tell us what are some of the principal causes of complaint that the employees offer when they quit?
A. Well, their difficulty, when they leave, the particular cause or causes, the work isn't right, someone needs them at home,
but what really is true when you begin to talk with
732 them is that they are disgusted with life in Washington.
The salary looks awfully good to them when they come here, and when they find out that they do not have any left at the end of the time, why, they are ready to quit.
Q. And do they assign any more specific reasons or elements than the high cost of living?

A. Well, yes, sir. Now, do you want to confine this just to the exist interviews, or to the times that we see them; we keep seeing them all the way along while they are there.

Q. Cover it all, generally.

A. Well, if we get an inkling or notice of dissatisfaction, we try to talk to them first. As one of the other women was saying, we try to budget them; they just get discouraged, we try not to wait if we can, until the time they come in on the way to the train; we try to build up their resistance to the distractions they have as well, and we discuss, when they come in, and we encourage them to go deeper than the overt reason that they have given for dissatisfaction or for wanting to leave.

Q. Well, what are some of these reasons for dissatisfaction that they give, more specifically?

A. It is getting tired of being in Washington and not having any money.

Q. Is transportation an element in that dissatisfaction?

A. Yes, it is.

733 Q. Would you elaborate on that a little, please?

A. Well, at Gravelly Point, you know, the people pay 10 cents to get over from 12th and Pennsylvania where they only pay a nickel at the Pentagon, and we just hear that.

If you like, I might give you an impression now; I don't know the ins and outs of that bus fare, but they keep complaining why can't we ever have a pass that will bring us clear over here, or why do we have to pay 10 cents when we don't go any farther than the people in the Pentagon Building that only pay 5 cents.

Capt. DAVIS. Your witness.

Cross-examination by Mr. AWALT:

Q. They would not object to paying 5 cents?

A. Oh, not the same.

By Mr. QUIRK:

Q. Miss Newman, is this close up relation you have with these employees in telling their troubles to you, have you ever gotten the impression that the people over there in the War Department may need additional funds?

A. No, sir; we don't.

Q. That is not one of the reasons that they want to leave?

A. No.

Q. Just go broke?

A. No; they don't go broke, but they came here to get rich and they don't.

Q. Did you ever hear any of those people down at
734 Gravelly Point mention a 7½ cent ticket that the W. B. and A. have?

A. That is right, they buy them there on Wednesday from 12:00 to 2:00, and their complaint is that they can't get in and get those tickets and they are very crowded in that room for the two hours that it is open one day a week.

Mr. HILL. Where do you live, Miss Thompson?

Mr. QUIRK. Well, I do know that those tickets are available.

The WITNESS. Oh, yes.

By Mr. HILL:

Q. Where do you live, Miss Thompson?

A. I live in Clarendon.

Q. Now, you have mentioned transportation as one of the elements of dissatisfaction, or that enters into this dissatisfaction. What are some of the other elements?

A. Again, I ask you, the ones they give when they are giving a reason to put down, or the ones that you can pry out of them?

Q. How good a pryer are you?

A. I am a pretty good one.

Q. All right. I mean, you are looking at those statistics from the War Department, but I mean, give you any others in your position; give any other reasons?

A. They give them; give the supervisor whom they work with right there, they will give the reason, and those are the reasons that are in those statistics.

735 Now, we are trying to keep following up and trying not to make the same mistakes.

Mr. QUIRK. Are those reasons true or false?

The WITNESS. I think they are concealed.

By Mr. HILL:

Q. You mean that there are reasons why an employee should be ashamed to tell you?

A. No.

Q. They certainly would be frank on that subject?

A. Yes, I think so.

Q. Now, what object do you think they would have, some reason for concealing, would that be the same ones I asked another witness, domestic difficulties, difficulties with their coworkers in the office, things of that sort, some personal difficulty?

A. I don't think that they are as frank in one direction as the other. I think it is indifference, that you don't get in the written reasons, I don't think they are true in any one direction.

Q. Then would you say that the reasons shown on the bulletin of the War Department are approximately correct?

A. I would say they are consistent.

Q. Consistently correct?

A. Yes.

Q. You think that those bulletins, for instance, for June 1943, showing that transportation was given for one reason,
736 let us say given as the reason in 1 percent or less of the cases?

A. That was as the main reason, wasn't it?

Q. No; just a reason.

A. One of the many reasons. Well, I think it is. A cause of leaving. Now, what have you got there for the other causes?

Q. I don't know.

A. Well, here it is, general living cost exactly ½ which is more than is shown for transportation.

Q. Yes. So call it 15 percent general living cost.

A. I do not know what it is.

Q. Well, need in their families is a cause for leaving.

A. That is a necessity.

Q. They do not get lonesome?

A. I don't think they give lonesomeness to us as a reason. Anyway we can take care of that if they will tell us.

Mr. HILL. That is all.

Exam. MATTINGLY. Are there any other questions?

Lt. MATHEWS. I have a question.

Redirect examination by Lt. MATHEWS:

Q. Miss Newman, as long as you have been asked about those figures, I think you should be shown a full sheet so that you can make any comments that are appropriate.

A. I have one at the office. No; I have no comments.

737 Q. It is a fact that the high cost of transportation might well be an element even though something else was given as the main reason?

A. I implied that.

Mr. HILL. But where they give transportation, it might well be that they did not get along with their husband or wife?

The WITNESS. No, I do not——

Q. They could well give transportation as the reason when they had some other reason?

A. I think that we do not get the real reason on all occasions.

Q. Now, in response to Captain Davis, you said something else might very well enter into some of these reasons that are given; did you not?

A. I don't know whether that is what he meant or not.

Q. I understood what he meant.

A. I am new at this, you know.

Mr. QUIRK. You are getting along all right.

Mr. HILL. If you are with the Captain long enough you will know how to answer.

The WITNESS. But you asked me a direct question.

Mr. HILL. You said, did you, that transportation might well enter into some of these other reasons although it is not shown in this tabulation?

Capt. DAVIS. That is not what she said.

738 The WITNESS. I think so.

Mr. HILL. The reverse might be true?

The WITNESS. It might.

Mr. HILL. Where transportation is shown it might be some other element?

The WITNESS. It might.

Mr. HILL. Yes, sure. Thank you.

By Lt. MATHEWS:

Q. Did I understand you to say that those figures that he has referred to are built up on the report as made to the supervisors?

A. Yes.

Q. Is that what you said?

A. Yes.

Q. Do you think they always give——

Exam. MATTINGLY. Well.

The WITNESS. There are 26 reasons on that slip and we put down in this search interview that we try to give them, we put down all the reasons they mention as we are talking to me, and at the bottom you will find there is one main reason. Now, if we are talking to them, we might find that there seems to be a stronger reason than the one they told the supervisor, then we make out the form.

By Lt. MATHEWS:

Q. Then does that get into the information?

A. Yes.

739 Q. Well, if a person had several reasons for leaving would you put all of those in those statistics, that Mr. Hill is referring to?

A. No; we do not all but they all go into the regular report.

Q. Do you in your case pick out one or more than one; how do you do it?

A. They ask them one main reason, and we pick it out.

Q. Just one?

A. I do not know how they make up the statistics, but I know there is one main reason, but there are others; there may be six reasons shown.

Q. Maybe six; but only one appears on these statistics?

A. Right.

Q. To that extent then, the statistics do not report all the reasons they may have?

A. No; there is one main reason.
Q. Do you often find that there is more than one reason?
A. Oh, nearly always.
Q. Nearly always?
A. Nearly always.
Lt. MATHEWS. That is all.
Mr. HILL. But I understand you do put down the main reason?
The WITNESS. We do, towards the bottom of the slip now; but we do not make up the statistics.
740 Mr. HILL. Those are compiled?
The WITNESS. That is right.
Mr. HILL. Thank you.
Exam. MATTINGLY. That is all.
(Witness excused.)
Col. BARRON. We are ready for Mr. Heberle again.

J. E. HEBERLE resumed the stand and testified further as follows:

Direct examination by Col. BARRON:
Q. Mr. Heberle, how many busses does your company have on an average, take any period, either week or month, that are not in use?
A. I could not answer that from information I have here.
Q. Would some other officer of your company have that information readily available?
A. No. I would be glad to try to get it for you, Colonel.
Q. You do know that there is a substantial number, ordinarily, that are not used?
A. I think that might be true since the present orders with respect to restriction in the use of rubber have been in effect curtailing the bus mileage, and I think that the actual number, or the number that I will obtain from the records for you, will answer the question more directly and completely.
Q. All right. Can you tell me how many bus miles your busses operated on the Pentagon operation; that is, both
741 lines, during the, well, say, since January 1st, this year. Do you have it broken down?
A. On both lines, it is shown on Exhibit 89, Colonel, 427,663 miles.
Q. That shows the period?
A. Yes, that is for the first seven months.
Q. Yes, sir. What are the corresponding number of bus miles for your total bus operation for the same period?
A. 15,471,551.
Q. For the same period?

A. That is correct.

Q. What is the average number of actual busses employed or used in your system operation during the period you mentioned?

A. We have a total of 1,249 busses at this time. We had a lesser number January 1, and I would say that during that period, with the exception of probably six busses that I know of, all of the other busses were in use some time during that seven months.

The six busses would not relate to the present 1,249, but were six busses that were retired about three months ago, and I would say that those six were not operated at any time during the seven months.

Q. Within the preceding 30 days on the Pentagon line, what would you say was the average number of busses actually used all the time?

742 A. What do you mean by preceding?

Q. Well, take the last month's operation.

A. Month of July or August?

Q. August:

A. And what is the question?

Q. How many busses were actually operated on those lines, the average number, during that month?

A. Colonel, I would have to take the same kind of research which would not be too difficult, and if you want me to do it, with respect to the month of August, I will do it. I have it already for the month of July.

Q. What is it for the month of July? I do not think it is necessary if you have it for the month of July, that will be sufficient.

A. In the month of July there were 97 busses that were used either whole or part time. There are 2 of those busses that were used on Pentagon solely, according to the method that I have already explained in the record before.

Capt. DAVIS. Only two?

The WITNESS. Please let me complete my statement.

Now, that 97 included 9 spare busses. Now, as I have explained, I took the 97 busses, and from that subtracted 2 that were used exclusively on Pentagon and used them as exclusively used there.

The remaining busses, which would be 95, I attributed
743 one-half to Pentagon, or 47½ busses, or an equivalent whole busses.

By Col. BARRON:

Q. Yes.

A. My I say that in the figures that I have given so far and in my exhibit No. 89, it can be said that for the month of July

that I have included 49½ busses. And I make that up because I find in looking to July that there were 2 busses, and from the figure that I referred to a moment ago, because over the 7-month period there was only one month of the period that the average that was devoted exclusively to Pentagon, only 1, but in July it was 2, so that I take 97 as my total busses, and I take the 2 out of it that I say were used exclusively for Pentagon, and then I have 95, and ½ of the 95 is 47½ plus 2 is 49½ busses that I have set up for Pentagon in that month.

Q. Why didn't you use 47 or 48 in making up this table rather than 97?

A. Because, as I have already explained in the record, there were 95 busses that were out and each one was attributed and each one used at Pentagon on rush hour service and other rush hour——

Q. I know, but of course what I want to know was actually the number you took to conduct that operation over there.

A. Well, I have listened to testimony on that from Mr. Locke this morning, and I think that information which is in the
744 record, if I understand it correctly, it was fixed at something higher than 49½, it seems to me between 60 and 65 busses.

However, I am relying on my recollection. You see, Colonel, if I understand the drift of your questions this morning, and if I may comment, you are going to find out how many busses would be required for Pentagon if that operation were considered without any assistance that it might get from the rest of the line, rest of the operation.

Q. In addition——

A. Please let me continue.

If you do that, you would assume, you would have to assume that the Pentagon, a certain number of busses would be required on these trips back and forth between Constitution Avenue, on either leg, to the Pentagon Building.

Now, if we would attempt to serve the Pentagon service with busses devoted exclusively to that, we would have a higher cost because there would be certain busses that must be sent down there, certain specific busses that would be allocated to that line and they would be sent down there and those busses would go down according to the demands, and they would run in the Pentagon service back and forth between the terminals and it would require a lesser number of busses than the 97 busses that I start out with, but you have used—we have used the other method of operation and take busses that may be available
745 from nearby points and put them in there and the use is

divided between Pentagon and the rest of the rush hour service.

Q. Well, in an operation, of course, which is what I am getting at, the allocation, of course, is 97 busses for that operation, even when you know you don't have use ever for more than half that many busses.

A. No, Colonel, I have started out——

Q. Yes?

A. It is a fact that there were 97 busses that were used for any day, 97 is the average used in there.

Now, for example, any day we could get the base number and you would find certain busses, one or two busses that had no other use that day.

Q. All right. Now, if you use a different bus in the forenoon than in the afternoon, do you count two busses?

A. I would have to look at that, Colonel. I would say no, because I am looking to the maximum use and I will check that.

It does not make any difference in the last analysis because we have two rush periods to consider, and if a bus is used in the morning rush in both services, one half of its use is charged to Pentagon and the other half of the use is charged to the city service.

Q. I assumed when you offered this exhibit that it was based, of course, on a reasonable allocation of equipment and
746 obviously you have got to know the equipment it takes to operate the operation not just any of the number out of several hundred busses that your company owns or may use part of the time down there. That would be a reasonable basis, would it not of allocating, what is actually required for the job?

A. When we put a bus down there, irrespective of what the number of the bus is, that bus is used on the Pentagon.

Q. And other uses, too?

A. It may make one trip, two trips, or more trips; yes, sir, and this is the number of busses that is required under the method that we are serving Pentagon service.

It is a greater number than would be required if we devoted busses exclusively to Pentagon and did not use them anywhere else.

Q. Of course.

A. Now, to me, it is perfectly simple that if you are taking a bus that has two uses, that is not available the full time that Pentagon requires busses, you may take two busses and devote half their time to Pentagon and have the equivalent of one bus that is used full time.

Q. Yes, but it——

A. And it is more economical in the operation of Pentagon to follow the former course.

Q. The way the table is set up, of course, that leads to the conclusion that 97 busses are wholly allocated to
747 this operation.

A. This table in no way refers to 97 busses, it is not on there and it was in my explanation which I feel covered the point.

Q. In arriving at these figures for depreciation on 97 busses, do you consider depreciation alone?

A. No, we did not; we considered rent of equipment and depreciation together.

Q. All right.

A. Because the equipment that is rented is not in the depreciation group.

In the month of July, we would have the equivalent of 49½ busses under a combined depreciation and rental, and that would be, for other periods, other months, it would be similar to that.

I want to make that clear because I would not have you feel that I was including in here depreciation for 97 units of equipment, I am not.

Q. Well, about how many busses are used in the trans-Potomac operation in an average day that are not used in other services?

A. In July, two.

Q. Just two?

A. That is right.

Q. What weight have you given in your calculations to the effect of mileage on the life of busses?

748 A. None.

Mr. DUNLOP. You are asking for depreciation, Colonel?

Col. BARRON. Yes, the mileage.

Mr. DUNLOP. Mileage or depreciation?

Col. BARRON. Yes, sir.

The WITNESS. May I have the question repeated to make certain that I understand the question that I answered "none."

Col. BARRON. Read that back.

(Question read.)

The WITNESS. Th... ...swer given is correct.

By Col. BARRON:

Q. What do you estimate would have been the savings in dollars for the seven months' period to July 31, 1943, had you not operated the routes Q-2 and R-2?

Mr. WHITTLESEY. Mr. Examiner, isn't that a rather conjectural question at best?

Exam. MATTINGLY. I think the witness can say whether it is or not, whether he can answer it or not.

The WITNESS. That could be answered with respect to direct cost from the statement, to the extent that the direct costs are there.

It is a tricky question and a very difficult one to answer, because you could follow that up by saying, "Well, what effect would it have on your expenses or revenues if you commenced to trim off various parts of your system," and this is one part of a physically operated system.

749 By Col. BARRON:

Q. I think it is.

A. I am trying to get some kind of an answer, it is an extremely unsatisfactory answer.

I would say that it can't be computed. I mean, if the Pentagon service were not there, our expenses might be lessened by the amount shown in the exhibit or it might be greater.

I understand that it is an unsatisfactory answer, Colonel, but it is the best I can do.

Q. I think it is something that deserves considerable thought.

A. I do not think that it is possible to answer it.

Q. Your exhibit includes total expenses of $193,617.59; as this is a special operation, do you think that the expenses chargeable to it should be the expenses incurred by reason of its operations on Routes Q–2 and R–2, and not any allocation of theoretical or special expenses?

A. No, I think the cost that should be allocated to it are those that are set forth on the exhibit.

Q. Whether actual or not?

A. They are actual, I mean they are actual costs, not actually in what I have called direct costs, but they are expenses that were incurred because of the Pentagon operation.

Q. Now, a lot of these costs shown on the statement, of course, are system costs, aren't they, which could be charged whether you operated the Pentagon line or not, are they not?

750 A. There might be some of those and there are some costs in there that are not connected with the Pentagon operation and what I have figured here is an average of the system cost.

Q. When you say that, I think you probably wish to give them, what costs have increased and how much.

A. Well, I can go through the entire list. I can give you a few, Colonel.

Q. All right.

A. Gasoline, we can readily understand, tires, maintenance of busses, any breakdowns that occur that are the result of Pentagon operations.

Q. They may not relate to that line and its equipment?
A. I beg your pardon?
Q. They relate principally to that line and its equipment?
A. That relate to the operations conducted on that line.
Q. Yes, sir. That is what I mean.
A. And all of the costs here are attached to that operation and what we have set up here is the product of them.
Q. All right.
A. Now, I have mentioned some of them.

By Capt. DAVIS:

Q. Well, suppose you were going to make an allocation of what you might call the incremental cost of the Pentagon operation, whichever, which of these items would you pick out as being out of pocket additional cost?

A. Well, I would pick out the maintenance of plant and
751 equipment, I would pick out operating garage expenses.

Q. Well now, wait a minute. Excuse me.
A. Yes, sir.
Q. While you are on those two——
A. Yes, sir.
Q. Did you buy any additional busses because you started the Pentagon operation?
A. I would say yes, although that is a complex question because we have bought many busses, and in contemplation of this Pentagon service, we felt originally we would have to buy many more and we bought a substantial number of busses for this, so I say, that there were a portion of them bought for Pentagon.
Q. Did you buy any more garage space?
A. We have constructed one or two garages in the last couple of years and there again, I might say, that because of these additional busses, part of them for Pentagon, that the garage was constructed.

Now, that amount, rent and depreciation, that would run to depreciation, unless your question goes to the second part there, operating garage expenses.

Q. So far as this operating garage expense is concerned, that would not be decreased very much if you did not run the Pentagon busses, would it?

A. It might be decreased to the extent shown, might be
752 less than the amount shown, might be a great deal more.

In the garage expense, of course, you have labor and the other things that are used on busses, mechanical upkeep, I can't say that these are all the expenses that apply to busses more than the natural moving of busses around the garages, storing them, washing them, all of those charges, I can't say that those charges

do not apply to some bus out there, because they happen to be running on the Pentagon line.

I would say that they belong there to the extent to which they would be applicable.

Q. But you would have to keep your plant in shape and keep your garage force in hand even though you did not run a few busses out to the Pentagon, wouldn't you?

A. Well, Captain, if you think that even 50 busses are a few busses, I have been hearing of an operation of an entire company that had 94, that is one-half of a company.

Q. Well, your revenues for seven months, your revenues here for the Pentagon operation are what per cent of your total revenues, approximately?

A. Of course, we are talking of total bus revenues.

Q. Yes.

A. Somewheres around between two and one half and three per cent of the bus revenue for the same period, Captain.

Q. Now, what is your total number of busses, approximately?

Col. BARRON. He has stated that.

753 Capt. DAVIS. All right.

The WITNESS. Do you want the total number of busses?

By Capt. DAVIS:

Q. The total number of busses used in your operations.

A. 1,249 at present.

Q. Well, do you need all those busses at the present time or is that more busses than you can use with the available manpower and gasoline?

Mr. WHITTLESEY. I object to that question. I do not see that it has any relevancy in so far as Pentagon operation is concerned.

Capt. DAVIS. Well, he has been testifying to that.

Exam. MATTINGLY. You do not need to argue. The witness may answer.

The WITNESS. The Colonel has asked for some information on the number of busses that have not been used recently.

When we answer that question, Captain, won't that give you your answer?

Lt. MATHEWS. The question was the number of busses, busses from one day to another.

Col. BARRON. I want to know the amount of idle busses on an average.

The WITNESS. All right.

By Capt. DAVIS:

Q. So at this time you can state that you have an ample margin of busses?

754 A. I would say that we do have at this time an ample margin of busses under these restricted conditions.

Q. And have you made any study then of whether, if you have to eliminate the Pentagon operation you would not have to go ahead with just about the same expenses insofar as maintenance of plant is concerned and garage expenses?

A. Those expenses would be reduced if that operation was not being conducted.

Q. By how much?

A. I cannot tell you exactly, Captain.

Col. BARRON. Can you make some estimate of that?

The WILNESS. I am sorry, Colonel, that is one that I would hesitate, and I would say that I would be unable to make.

By Capt. DAVIS:

Q. I see.

A. It means going back to find out when you would break off certain parts that are in here.

Q. Well, in other words, in making up this statement, you did not attempt to consider at all what the incremental costs would be as distinguished from these general over-all costs?

A. I did.

Mr. HILL. Mr. Examiner, I have refrained from objecting but I wonder if Captain Davis would be good enough to explain if he can now on the theory that every time Capital Transit puts in a new service a proportionate share of all the expense is not proper to be charged to that service.

755 Is he trying this case on the actual out-of-pocket cost theory?

Capt. DAVIS. Well, I think it should be pointed out that the companies have claimed that this is a very special type of service and that it cost them a great deal more and they have brought forth an exhibit which indicates that the expenses are more than the revenues from this particular service, while, as a matter of fact, at least, and we are assuming it is a fact and we are trying to prove it out by these questions, there isn't any out-of-pocket expense because most of these expenses, not all of them, would be going on anyway with a moderate sized operation, so the mere——

Mr. HILL. That is still an out-of-pocket cost, and certainly not an out-of-pocket cost theory, Mr. Examiner, and the Commission could not possibly rest on that theory if it wanted to.

Capt. DAVIS. But here you have got a special additional fare which has been imposed by this company and we are trying to find out whether it is reasonable either to consider the whole thing as a unit; if they are, then shouldn't they apply the same fares?

Mr. HILL. We have had question after question, Mr. Examiner, based on that very theory.

We think that that service should bear its proportionate share of the expense. It is certainly proper to bring that
756 out.

Exam. MATTINGLY. Well, that is the War Department's theory, they can develop that if they wish.

Capt. DAVIS. We haven't stated that that is the theory, we do think that that is something that should be considered, if as a matter of fact the incremental cost is very small, that condition should be brought out in order that proper consideration might be given by the Commission, and we feel that this should be considered as a unit with the other transportation and no more should be charged them for this rush-hour service than any other corresponding rush-hour service.

Mr. HILL. If you start lopping off one piece of this line after another, you would have the busses running up and down 16th Street with all of the expenses of the system charged to that one bus line.

Exam. MATTINGLY. Well, the Commission will give due weight to these contentions. You may go ahead and develop your thought about them.

Mr. HILL. Well, I just wanted to know if that is so, if that is the theory.

Col. BARRON. We are just trying to test this thing.

Lt. MATHEWS. I just want to point out that they are taking two sides of the same question in making out their statistical report and making these allocations, and when we try to point out
757 that the argument is the other way, they just argue opposite, and we want them to be consistent.

Mr. QUIRK. No such thing.

Exam. MATTINGLY. Well, I do not know what that means.

Mr. HILL. All I want is clarity, that is all.

Exam. MATTINGLY. Let's get on with the examination.

The WITNESS. I would like to answer the Commander's statement, if I may.

Exam. MATTINGLY. Well, if you think it is necessary, go ahead.

The WITNESS. Well, if the Commission does not think it is necessary, I will not.

Exam. MATTINGLY. I do not think that it is necessary.

The WITNESS. All right.

By Capt. DAVIS:

Q. Referring again to your Exhibit 89, Mr. Heberle, I believe you stated that these injuries and damages, $7,180, were based upon your over-all accruals of 4 percent of revenues.

In preparing this exhibit, did you give consideration to the possibility that the injuries and damages might be less because of the fact that it is a nonstop run and that there are grade separations and clover leaves to avoid any complications with other traffic?

A. No, I assigned the same percentage that we assign to our system as a whole, which operates in the District of Columbia and in the outskirts and in Maryland, as well as Pentagon.

758 Q. You did not attempt to consider whether the injuries or damages might be lower on a line of this character?

A. Our experience will have to show that, Captain, we haven't had the experience.

Q. Well, you mean you have had very few injuries and damages claims?

A. No; for any period you neither have your claims nor your costs, you get those after the period has elapsed.

Q. Well, this line has been in operation for about a year and how long now, two or three months, four months?

A. I think that from, of course the fact should not determine, it has been in something over a year, I would say.

Q. Well, how long does it usually take before you have an accident?

A. I do not get the Captain's question. We have had accidents on the line, I have no doubt; in fact, I recall some accidents on the Pentagon, but as to what our actual expense will be, what the costs for the first seven months of 1943 will be when they are developed, I do not know.

Q. Well, I appreciate that.

A. I do not like to talk about these things, but you can have an accident occurring right here while we are sitting here that would cost far more than we are setting up for seven months. That is a matter, so far as expert testimony is

759 concerned, I heard an earlier witness make some comment about the amount spent and the amount set up for injuries and damages by the Capital Transit Company in a year.

If the Capital Transit Company merely charged to this account this year the amount that it was expending this year for injuries and damages and then stopped right there, there would be creditors on its neck immediately because the cost items running from these operations this year are going to be paid according to our experience during the next seven years, that is our experience.

Mr. QUIRK. You cannot always tell what a jury is going to do, can you?

The WITNESS. No, no, you can not; because some of these claims have not even been brought to the attention of the jury, they

have not even been brought to the attention of the company, that is our experience, and this is a provision for injuries and damages costs on Pentagon for this seven months' period, and it is on the basis used, the same basis that we use for the rest of the city; namely, a percentage.

By Capt. DAVIS:

Q. Well, conceding, of course, Mr. Heberle, that claims may not be made and they certainly may not be determined within a short period, nevertheless you do keep accident records, don't you?

A. Yes.

Q. Showing the number of accidents?

760 A. The accident records that are reported.

Q. Yes.

A. Unfortunately, it is the unreported that are usually the costlier claims, the ones you have no record of that someone calls us and claims that this happened.

Q. Well, so far as the accidents that are reported are concerned, which you know about——

A. Yes.

Q. Have you made any study as to whether those are more or less on this line as compared with your other lines?

A. No, I have not.

Q. Now, yesterday you testified to something about the rented busses which you rent from the Defense Plants Corporation, and I believe you said that the rental ran slightly over or somewhere over 5 cents per mile.

A. I think I said 10.3 cents.

Q. I want you to clarify that.

A. Not slightly over, Captain.

Q. I beg your pardon.

A. 10.39.

Q. That is rental per bus mile?

A. Yes, sir; that was during the contract period, ending with June 30th.

Q. Well, now, under these contracts, as I understand it, you pay 5 cents per mile or a minimum of $125 a month; is that

761 correct?

A. That is right.

Q. So that if you use those busses more, if you used them a minimum of 2,500 miles per month, then you would only pay 5 cents a mile, wouldn't you?

A. That is correct.

Mr. WHITTLESEY. If you use them less it costs you more?

The WITNESS. More, that is also correct, and we use the busses to the extent that we are able to, but there is the 5 cents per mile.

the minimum for current performance, current payment to O. D. T., and we charge in our accounts the rents that we will ultimately pay and we know that that is going to be at the rate of minimum of $1,500 per year or $125 a month.

Mr. DUNLOP. When you said "O. D. T." you meant Defense Plants Corporation?

The WITNESS. Correct, Mr. Dunlop. I would like to have that correction made.

Exam. MATTINGLY. Let us suspend until two o'clock.

(Whereupon, at 12:30 p. m., adjourned until 2:00 p. m.)

762 AFTERNOON SESSION—2:30 P. M.

Exam. MATTINGLY. Proceed, Captain.

Col. BARRON. Just a minute. I would like to just have a moment, the Secretary of Commerce has sent down a representative, and they desire to make some statement in reference to their installation down at the National Airport, and I think it would be a very brief statement.

Exam. MATTINGLY. Do you want him to come to the stand?

Col. BARRON. I think he wishes to make a statement for the record.

Mr. TARRINGTON. I have been requested by the Secretary of Commerce and the Administration of Civil Aeronautics to make a statement to the effect that they are both interested in the establishment of a reasonable bus fare rate to and from the Washington National Airport.

The Civil Aeronautics Administration has many employees who live in the District and who travel to and from the airport on busses; as well as the concessionaires of this airport, and also the fact that the busses—bus transportation facilities are used by patrons of the airport.

We have no intention of presenting any figures because it is our impression that the figures presented and introduced by the War Department sufficiently cover all interests in so far as transportation facilities to and from Gravelly Point, where the airport
763 is located, as well as some of the Army installations.

That is the extent of the statement.

Exam. MATTINGLY. I did not get your name.

Mr. TARRINGTON. Tarrington.

Exam. MATTINGLY. What are your initials?

Mr. TARRINGTON: H. G.

Col. BARRON. Go ahead.

Exam. MATTINGLY. Would you care to enter a formal appearance?

Mr. TARRINGTON. Very well.

J. E. HEBERLE resumed the stand and testified further as follows:

Direct examination (continued) by Capt. DAVIS:

Q. Mr. Heberle, before lunch you were telling us about the extent to which you use these Defense Plants Corporation busses on the Pentagon operation.

I believe you said that the rental paid per mile was approximately 10.7 cents, was it not?

A. 10.39, I corrected it to, Captain.

Q. I beg your pardon.

And the reason that that rental is so high, is it not, is because you do not use these busses up to the maximum allowed; is that correct?

A. We do not use them up to the maximum that would call for 5 cents per mile payment.

764 Q. What is the average amount which you use a bus over your whole line in terms of miles, either per month or per year?

A. That was the question that you asked me yesterday, Captain, and I have the information here.

Q. Yes, sir.

A. During the first seven months of 1943 and placing that on an actual basis, the average miles per bus is 21,408 miles.

For the year 1942 the average miles were 24,443 miles per bus.

Q. So that these busses are run very much less than the average, the Defense Plants busses?

A. That is correct, than the average of all busses.

Q. Do you have the figure for the number of miles that these Defense Plants busses were used?

A. I think that would be a computation that would be difficult for me to give readily, Captain, because the Defense Plants busses were coming in during the various months of 1943 and I might consume some little time in trying to get an average annual figure that would compare with these others.

Q. Well, approximately, it would be approximately 10.7 divided into $1,500, wouldn't it?

A. The 10.39 cents is the average that was paid during the contract year ended June 30, and it included the part of the year for a number of busses, but it was reduced to days as required
765 and we know the mileage that was operated by these busses, the total rental payments divided by the number of miles gives the 10.39.

Q. Now, why is it you run these Defense Plants cars so much less than the others, in view of the fact that you have to pay a minimum amount for them anyway?

A. I would say that you could pick out another group of busses and you would find that they were operating possibly no more than the Defense Plants Corporation busses.

Q. That was not my question.

A. There is no particular reason, Captain. These busses here, we figure the actual miles operated by each bus, and aggregate them for the total busses.

There is no particular reason that I know of, they are new busses and we have other new busses that are operating, and they are being used the average of all of the busses in our service, according to the figures that I have given you.

That average, incidentally, is obtained by taking the total of miles and the average number of busses owned and leased.

Mr. DUNLOP. May I ask a question:

Mr. Herberle, has the fact that those busses are restricted in the contract to a maximum mileage; does that have anything to do with it?

The WITNESS. I do not understand that they are presently restricted, Mr. Dunlop.

766 By Capt. DAVIS:

Q. Well, they are restricted by the Office of Defense Transportation, are they not?

A. I do not understand that they are, Captain.

One restriction on them might be that from our own viewpoint it would be a disadvantage to the company to operate them more than 30,000 miles in a year per bus, so that might account for lower average miles for these Defense Plants busses.

Q. Well——

A. We have the 5 cents per mile as a minimum, and we pay that in cash to the corporation each month, but we know that the minimum rental is going to be the $1,500 per year per bus.

Now, we would like today to operate those busses 30,000 miles, if we operated 40,000 miles a bus on that basis, then we would pay $2,000 rent for that bus, whereas the minimum is $1,500.

Q. Well, I understand that, but isn't it a fact that if you want to keep your costs down and use this bus for 30,000 miles, in view of the fact that you are paying just as much if you use it less than that?

A. No, there is no advantage or disadvantage. It comes down to a matter of computation as to what your average cost per mile is, it might raise the ratio of cost per mile, surely, that is, any difference in the number of miles, but we are going to pay the $1,500 per bus per annum on those 120 busses.

767 Now, there is no design that I know of outside of the fact, the natural design, that over a year's time it would

be more costly to the Capital Transit Company to operate the busses in less than 30,000 miles; anything up to 30,000 miles does not make any different.

Q. As a matter of fact, you are operating them only about 15,000 miles; aren't you?

A. No.

Mr. HILL. Just divide your 10 cents by the $1,500.

The WITNESS. That sounds reasonable.

By Capt. DAVIS:

Q. Yes.

A. To operate how many miles, did you say?

Q. About 15,000 miles.

A. 15,000 miles would be the average for that period; I would say. Now——

Q. And it would not cost you any more so far as your bus rental is concerned if you ran the busses twice as far?

A. That is right.

Q. Under those circumstances, can you explain why you charge this operation here with a rate of 10 cents per bus mile while you are running other busses a lot more?

A. I could have substituted, or I could have kept out of this Pentagon contract the 18 busses that are rented from the Defense Plants Corporation for which the rental was 10 cents per
768 mile, and that would have disregarded the fact that some of these busses are actually used in it.

I thought I would be criticized for it.

I do not believe that there is very much difference between the depreciation cost on busses assuming that we were to use the busses that were not rented from the Defense Plants Corporation in the Pentagon service.

I do not believe that the statement that I put in would be affected to any material extent.

I tried to make it factual so far as the operation during the seven months was concerned, and to the extent possible.

Q. Well, the fact of the matter is that a larger share of rolling stock is charged against this operation than against your other operations; isn't it?

A. The percentage of the total 120 busses that are included in Pentagon is a larger percentage of that total than the remainder of the total operated is to the Capital Transit System.

Q. So that to the extent to which you use those busses lightly and thereby increase the cost for your own reasons, whatever they are, to that extent you have a larger share charged to this operation because you are using more of the busses in this operation?

A. I do not think I have increased the cost of this operation by including those rented busses in here, I substituted the rental for depreciation.

769 Q. You mean even at 10 cents, 10.39 cents per bus mile it is cheaper to use those busses than to charge the depreciation and maintenance of your other busses?

A. I would not mix up the two, depreciation and maintenance, the rental substitute for depreciation.

Q. All right. Well, now, your depreciation per bus mile for your whole system is approximately 4.3, isn't it?

A. Yes, but that has no connection with this, but that is the average depreciation over the entire system, rush or non-rush.

Q. These busses are used in rush hours only, used and useful, can be used only in that period. Those two figures are not comparable.

There is nothing to prevent you using these busses during other periods, is there?

A. If we were to use these busses during the entire period then a bus that is now used during the entire period would be laid on the shelf, laid out of service because the bus service requires, the number for the peak as I have explained it, requires a great many more busses, this Pentagon service, because it is, of course a peak service entirely.

Q. Yes. So that the amount here charged for depreciation and bus rental depends wholly on what busses you selected and whether they are rented or new busses or old busses and which particular ones you use in this line?

770 A. They depend on the busses that are used on that line, yes, sir.

Q. On this Defense Plants Corporation agreement, Mr. Heberle, are you generally familiar with its terms?

A. Generally.

Q. Does that provide that your company has an option to buy the busses?

A. There is such an option.

Q. And when the amount of rental payment aggregates the value of the busses, do they then become the property of your company?

A. I think the contract calls for interest as well as rental payments, although that, as you have stated, I do not believe that that is quite correct, Captain.

Q. Will you qualify it?

A. Well, I am depending on my recollection. I think it is a question of appraisal of these busses, and that if the purchase option were exercised, that the cost of the busses to Defense Plants Corporation, with their, as I recall, 4 percent interest up to the

date of such purchase, and from that, as I recollect, might be deducted the payments that had been made in rental, plus 4 percent interest on the payments, and the balance would represent, on one basis, again, as I recall it, the price at which the busses would be taken over.

That would have the effect, if you exclude the effect of
771 interest charges, of making it possible for the company to acquire the bus at its depreciated cost, that is, cost less rental payments.

Now, that is my recollection of one option under the contract.

Q. So that to the extent that you later buy these busses, you do not lose anything by paying the full rental even though you may not use the busses very much?

A. I would say that the bus is depreciating to the extent of the rental right along. I do not want to express my opinion on what kind of a bargain that would be in the case of a bus, but I do not think it is much of a bargain.

Q. You mean you have these busses depreciating by the amount of $1,500 a year even if they are not used at all?

A. I think that may be a conservative statement as to the depreciation of busses at this stage of the game. I think in view of the change in the art, it is not a question of the bus depreciation, it does not depend upon mileage entirely by any means, nor do I say that mileage is necessarily an important element of depreciation with respect to busses.

We hear plenty of discussions of changes in the art that may make a lot of busses depreciate much faster than $125 a month.

Q. What depreciation rate would that be, approximately?

A. $125 a month, $1,500, it is approximately 12½ per-
772 cent or an 8 year life, 8 years would reach 1951.

Q. Then you feel that with the small amount of use that 10 cents is a reasonable depreciation rate, 10 cents per bus mile?

A. I think the figures that I have used in here are reasonable for this service; yes, sir.

Q. Then how do you explain the fact that your company only charges a little over 4 cents per bus mile for its overall operations?

A. That is the average for the entire system, base and rush.

Q. Well, is the depreciation any higher on a new bus?

A. No.

Q. Well, will you explain that discrepancy, or can you explain it?

A. Yes; you are talking about depreciation in cents per mile, and that for all of our service or base service, that is, service that existed in equal quantities throughout the hours of the day, say, for 20 hours, then your average per mile would be even lower than the 4.43.

That is affected by the fact that there are a number of busses in the fleet that are used during the rush hours only, and others are in the base.

Now, for those buses that are required for the rush hour service, and there are a great many of them, then the depreciation
773 that is properly allocable to that service is substantially greater than the average for the all day service.

Q. In other words, you feel that depreciation is primarily a factor of bus service and does not depend very much on the number of miles the bus is run, that obsolescence is the primary factor?

A. Obsolescence is a very great factor.

Q. And would you depreciate a bus just as much if it ran 50,000 miles a year as if it ran 10,000 miles, say?

A. Generally speaking, yes.

Col. BARRON. There are no stops, of course, on the runs to the Pentagon, consequently, I suppose you use less gas to get there.

The WITNESS. I would, as a layman; I would think that the answer to that might be yes, although I think we ought to have more expert opinion on that.

I am just thinking that are certain concepts that are known as critical, and what they are in a bus, I do not know, Colonel, so I am giving you an opinion there that is not worth very much and I frankly admit it.

Q. The same thing, as a layman, would you say the same thing with reference to the use of rubber?

A. I do not know as I would want to qualify as a rubber expert.

Q. Isn't it a matter of common sense that where you do not make as many stops you do not have as much wear and tear
774 on the bus?

A. It would seem reasonable. I do not know, Colonel.

Mr. HILL. That is absolutely incorrect; the further you run tires without stopping, the hotter they get and the greater wear and tear on them; that is well known.

The WITNESS. Well that shows, as I have already stated, that I am not an expert.

By Capt. DAVIS:

Q. Well, then, you did not consider those factors in making up these exhibits, did you, Mr. Heberle?

A. I did not; I took the average.

Q. Now, we asked you about the busses which were used only in the Pentagon line, and you said there were 2 that were used only on that line in the month of July. You also said that you could not make any allocation of the additional or incremental cost attributable to Pentagon operation.

Well, now, so far as depreciation is concerned, if you are figuring the incremental cost, and in view of your statement that depreciation is just as much no matter how little the busses are used, do you conclude from that that if you did not have a Pentagon operation you would save the depreciation only on two busses?

A. No.

Q. Will you explain that?

A. I think I stated at some time or other during my
775 testimony, Captain, that I believe that some of the busses purchased had been for Pentagon, but as a practical matter, are used, we may be using them on other lines.

Now, the busses that I have allocated to Pentagon are those used on Pentagon to the extent that I have indicated because I have allocated 50 percent of the busses used on Pentagon, with the exception of 2 to other lines of the system, or the balance of the system.

Q. Do you know whether your company plans to buy these busses that you are now renting from the Defense Plants Corporation?

A. I do not know.

Q. Who would know about that?

A. I can give as my opinion that no one would know at this time.

Q. Well, is it a fact that if you are going to buy them, it does not make any difference whether you use the maximum rental in the amount you pay for them, but if you are not going to buy them, you are not getting your full money's worth out of the present contract?

A. Well, I think that we are getting our money's worth out of the present contract, Captain, because that—of the nature of the contract——

Q. But you are not getting as much out of them as if you ran them up to the $1,500 or $2,000 per mile a month?

776 A. We are getting all of the use that is required of them, by the demand.

Mr. QUERK. You ought to just run them around.

Mr. WHITTLESEY. Would you pay very much for an eight year old bus?

The WITNESS. How?

Mr. WHITTLESEY. Would you—you would not pay very much for an eight year old bus, would you?

The WITNESS. I would not recommend the purchase of an eight year old bus at any price. I would not want it as a gift.

By Capt. DAVIS:

Q. Have you any opinion as to whether two busses cost more or less to maintain than old busses?

A. There is no definite statement that can be made with respect to that, Captain. Some new busses are very costly to maintain and others assume the characteristics that you hope all new ones will, and they are not as costly during the early stages.

Q. Have you taken into consideration in preparing Exhibit 98 the differences between old and new busses as far as maintenance is concerned?

A. No. Neither have I taken into consideration, I have used the average, and in the base fleet there are something like 120 odd busses but all of smaller size, the maintenance on which is
777 less than the average bus, and generally the average less than the large bus that is used on Pentagon.

Q. Now, in arriving at your total of 97 busses that you use, did you use a different bus in the afternoon than in the morning on the Pentagon run, if you did, do you count that as two busses?

A. No.

Q. Are you familiar with your operations in other parts of the city, Mr. Heberle?

A. Yes.

Q. You operate quite a few rush hour services other than the Pentagon service?

A. A great many.

Q. Well, now, have you prepared any similar statement of the character of Exhibit 89 with respect to the operations of any such special rush hour services?

A. No.

Q. If you did prepare such a statement, would the cost be similar to that on this service per bus mile, if you know?

A. It is rather difficult to answer that question because of certain special characteristics of this line.

Q. Well, would you——

A. We could not prepare such a statement for our other lines similar to the Pentagon statement there, because this line is a detached line and many of the costs, direct costs that run to it,
778 and it does have the special characteristics that have been described.

Q. Well, now, what are the special characteristics which would differentiate another rush hour service from this one outside of fare collectors?

A. This operation, because of its concentrated load, seemingly has more supervisors. Now, what that would be more than would be found over a line that had different loading characteristics or not, I cannot say, and I do not believe that I would be able to find out because when we talk about lines, the rest of the lines of the system, we are talking about lines that many times run over the same

streets, they are passing the same riders, and those costs that I have spoken of might be less or more per passenger.

I just cannot approximate that.

So far as that is concerned, Captain, I am frank, I couldn't make up a statement that would—I would be stopped on operators wages if I tried to break down lines of the rest of our system.

I can't get at these things because an operator goes on to this line and when I say I can't get it, it means work on the manifests every day, picking this information out, but it is done because of the special characteristics of the line.

Now, to attempt to do that for the rest of the lines of the system would be so costly with 35 lines, or whatever it is, that it is just impracticable to even contemplate.

779 Q. How many different rush hours, rush hour services, do you operate, Mr. Heberle?

A. I could not answer that. It might be in the mind of somebody that was looking for different destinations on the bus, it might be fifty or a hundred.

Q. Could you name some of the principal ones without going into all of them, but just so the Commission may have some picture of the number of operations?

A. Soldiers Home, that is one destination.

Q. That is a destination, but there are a lot of different services which run to that point, are there not?

A. Yes.

Q. What lines do they run on?

A. Well, now, Captain, if you want to know the lines that run into various parts of the city, I would suggest that you ask Mr. Locke.

Q. Well,——

A. In other words, we have not considered that.

Q. In any way at all?

A. I have not prepared any statement. I have prepared this statement, a statement of revenue, and I believe it is a fair statement of the cost of the line.

Q. Well, you are just not familiar with these other operations at all?

A. Oh, I am generally familiar.

Q. Well, then, answer the question.

780 A. I take it that you would rather have a list of the destinations.

Would you like to have this witness here to get them?

Q. I asked you concerning two or three of these lines so we can talk about something specific instead of going into a lot of generalities.

Name three or four specific lines that run on into the downtown area that are used for rush-hour service, if you know.

A. No, I do not know.

Q. All right. You have made no attempt to consider or study the number of these other rush-hour operations and compare them to the Pentagon operation?

A. That is correct.

Q. So that you do not know whether these expenses or a lot of these expenses would be higher or lower for the other operations?

A. I know generally that the rush-hour operations are more costly.

Q. That is your opinion?

A. No. I know it generally. I have been in this business some 38 years, I know it generally, and if you pick out a particular line, I would say yes; I would say that at the rush hours the cost on them are greater.

781 Q. In other words, the rush-hour costs are greater than the average cost.

A. Remember, I am talking about the total cost.

Q. You do not know?

A. I will give you an instance here, because on drivers' wages alone we pay time and one-half for a great deal of the service that is in here, because it is done as additional work, whereas in the base operation, normally, is considered straight time.

Incidentally, that rate is 95 cents per hour in these statements, and that is the rate that we are paying. As Mr. Locke testified, there was an agreement to raise that rate 5 cents an hour and that is before the War Labor Board, and if the War Labor Board approves that rate it will become one dollar an hour and these costs that are shown here will be greater than the costs that I have shown from July 1st forward.

Mr. DUNLOP. You mean it is retroactive?

The WITNESS. It is retroactive to July 1st, that is if approved by the War Labor Board.

By Capt. DAVIS:

Q. Now, you have just explained to us that these rush-hour services generally, from your general knowledge, cost more than ordinary all-day service per bus mile.

Do you know whether the rush-hour service in these various lines throughout the city cost more or less than the Pentagon except for this item of fares collectors?

782 A. No; I could not answer that. Some of them might be higher in cost, others might be lower in cost than Pentagon.

Q. Yes. And because of the complexities which you have indicated, you have made no attempt to make any such comparisons?

A. That is correct.

Q. Have you made any comparisons of the Pentagon per bus mile for the Pentagon operations as compared with these other rush hour lines?

A. No.

Q. Have you any explanation for the fact that these bus operators who drive their busses on an average of 17 miles per hour and that 11 cents times that would be approximately $2.00, whereas they are only paid 95 cents an hour?

A. The average speed on the Pentagon line is not 17 miles per hour.

Q. That is my understanding from Mr. Locke's testimony. Could you explain that further?

A. I did not understand that. I think Mr. Locke was giving something about the running time between two points and the round trip time.

Mr. DUNLOP. Elapsed time, not running time.

The WITNESS. They might make 17 miles while they are running.

By Capt. DAVIS:

783 Q. Getting back to your allocations on these overhead expenses, Mr. Heberle, could you tell us for the record how you allocate your overhead expenses as between busses and streetcars?

A. Yes.

Q. As it done for the Public Utilities Commission?

A. Yes; those costs that can be directly allocated, employees who are working on bus lines only are charged to bus and similarly those who are working on rail are charged to rail.

Then there are other officers and employees whose time, services, are divided between the two.

We use a ratio 40 percent to bus, 60 percent to rail, and that is for such expenses, and that is based roughly on the number of passengers, or it is based on the number of passengers. Because of the fact that it is impossible on mixed accounts of that kind to accurately get the exact amount that would be properly chargeable to rail and properly chargeable to bus, we used every effort not to load the bus, and this 40 percent is the factor that we have used that we think accomplished that.

In other words, I find that if we were able to accurately divide this thing we would have a heavier charge on bus than we do have.

Q. Now, have you ever attempted to allocate your expenses to the particular loads of passengers so as to get a cost per
784 passenger mile?

A. No; in the first place, I have heard quite a little talk about passenger miles. That is a statistic that is impracticable, I might almost say impossible to obtain, that is, over a normal system.

Q. Why is it difficult to obtain?

A. Because, in order to get it, you have to have the number of miles that a passenger rides on your line.

Q. Well, now——

A. In mixed systems here such as you have here, that means that to get any figures you would have to follow the passenger from the time he first embarked on that service until he leaves. In other words, follow him, trace his route, because passenger miles means the number of miles that a passenger rides.

Now, if you take the number of passengers that are hauled in the course of a year and just think for one moment of the problem of trying to find out how many passengers, how many miles, how many passenger miles you are carrying those passengers, and I think any reasonable person will say that that is an impossible statistic.

There were in passengers in the first seven months there were 99,600,000 revenue rides, what we call revenue rides, and
785 that does not include the transfer rides that would be run from that, and there would be in that seven months, 99,600,000 rides to follow through and find out how many miles each ride took. Now, I say that is out.

Q. Have you ever taken any sample to see how far the average passenger rides on any of your rush line services?

A. I have not, because I do not think any sample would mean anything, any more than give you a sample, and to the extent that you actually figured out the sample would give you anything beyond that sample.

Mr. DUNLOP. Those are in addition to the lines on the rails.

The WITNESS. I am speaking only of bus rides.

Mr. QUIRK. Busses only.

By Capt. DAVIS:

Q. In other words, you made no attempt to try to look at the cost of this service from the standpoint of the individual passenger?

Mr. DUNLOP. What do you mean by that?

The WITNESS. We can aggregate the cost divided by the number of passengers carried, and that is the device that I have used here, simply divide it, develop costs first, and simply divide it by the

number of passengers, there is your revenue and your cost per passenger.

Mr. HILL. Do I understand by your question, Captain, that the passenger who gets on a bus and rides across town only——

786 Capt. DAVIS (interposing). Well, the figures are in the record indicating that the people who have to go to Gravelly Point travel an average of approximately 6.2 miles.

Now, I thought it would be interesting to know from this witness whether they had any figures or any way of estimating whether the average ride in the District was less or greater than that, which might throw some light on whether or not the people going out there are being discriminated against by virtue of having a higher fare.

I thought that if Mr. Heberle had any figures on that, it would be helpful.

Mr. HILL. I understand he made no such investigation and could not as a practical matter.

The WITNESS. The other interesting thing that struck me about this 6.2, that is an average and certainly in order to give the service those people are spotted along various distances, you can not run the bus out the average distance and say everybody walked down to that point.

If you are going to have bus service it is going to run way beyond that in order to take care of that 6.2 estimate, assuming it is correct.

By Capt. DAVIS:

Q. There is no question but that your busses run further out. It is also true that in points of the city where you have heavier traffic you run more busses, don't you?

787 A. They naturally come in through the throat because most of the lines drain that way, Captain.

Q. And isn't it true also that these rush hour services particularly connect with other lines of your bus company or street cars so that people will take one street car or bus part way and another one for the remaining portion of their ride?

Mr. DUNLOP. Do you think that that simplifies the problem?

Col. BARRON. Shows that you get two bites at these boys.

The WITNESS. But one fare, Colonel.

Capt. DAVIS. One fare on most of these trips.

The WITNESS. Well, we have been hearing of people using their weekly pass, and there is an unlimited number of rides there for passengers, or whoever they happen to loan it to.

Col. BARRON. That is all for this witness for the moment, but we reserve our right for further cross-examination.

Lt. MATHEWS. Before that, I want to ask a couple of questions.

Col. BARRON. All right.
Mr. AWALT. Pardon me.

By Lt. MATHEWS:

788 Q. I want to find out a little more about this allocation of your overhead. As I understand it, you divide this number of busses by two.

Now, why was it that you arrived at that one half figure, will you go over that for me?

A. Yes; because, as I explained before, in the system as a whole the average use of busses in the rush hours is four hours; and the Pentagon line, the average use is two hours. Now, a bus that is used both on the system and Pentagon, we charge to Pentagon, or divide between the two in that ratio of two is to four.

Q. You use the same ratio for each of the busses that is used on that?

A. Except for those busses that have no other use. Those busses that are used in both the rush hour service on our own line and remembering that during the time that they are out in this period can not be used on Pentagon but those that have the joint use here are divided.

Q. In other words, you allocate the equivalent of two hours against each bus that is used on Pentagon?

A. What we have actually done is to take the total busses that are required for Pentagon and we find out of that that two of those busses have no other use and we substract that from the total, and then we take one half of the number of busses for depreciation purposes, depreciation and rent of equipment for Pentagon.

789 Q. Well, in other words, you use the equivalent of two hours for Pentagon based on the use of the busses four hours by the rest of the system?

A. On that we get 50 percent in that manner.

Q. You treat all busses alike?

A. Yes, sir.

Q. You make no difference between busses that are used for two hours and the one that is used for one trip, 24 minutes?

A. That is right, this would run to an average use on the Pentagon and an average use on the system.

Mr. AWALT. Mr. Heberle, a witness by the name of Taylor testified, I understand, with respect to a 2 cent per mile depreciation charge. I also understand that he said that he ran the bus 50,000 miles per year and depreciated it in 10 years on the basis of 2 cents, the bus costing $10,000.

I understand you to testify that last year your average miles per bus was 24,000 plus, and this year 21,000 plus.

Let's take 24,000 plus and a bus costing approximately $12,000. I understand that is approximately what your busses cost.

How many years would it take to depreciate it at 2 cents per mile?

The WITNESS. 25 years.

Mr. AWALT. In other words, you would have to operate a bus on that basis of depreciation for 25 years before you finally wrote it off?

790 The WITNESS. That is correct.

Mr. AWALT. That is not practicable, is it?

The WITNESS. No. No. We are using on this operation, we have estimated a life of 10 years for the busses.

Mr. QUIRK. Mr. Heberle.

The WITNESS. Yes, sir.

Mr. QUIRK. One of the questions or statements made by Colonel Barron as a prelude to a question implied that the Pentagon operation was without stop.

What are the facts about that, do those busses run from the starting point, 19th and C, for example, to the Pentagon Building without stopping?

The WITNESS. It is not my understanding that they do. The number of stops are certainly much less than they are over the city as a whole.

Mr. QUIRK. Well, but you do have certain designated stops on that route, do you not?

The WITNESS. Yes, sir.

Mr. QUIRK. And in the course of the rush hours, would not there necessarily be a lot of stops on account of traffic conditions?

The WITNESS. Yes.

Mr. QUIRK. And lights?

The WITNESS. We are subject to the same stops that other traffic in the streets would be subject to.

791 Mr. QUIRK. That is all I have.

By Lt. MATHEWS:

Q. Mr. Heberle, when did—you mentioned that your use of busses was cut down by rubber conservation, mileage limitations; when did you have in mind that going into effect——

A. I beg your pardon?

Q. When did you have in mind that that went into effect?

A. I think it went into effect about May, as I recall; but I am sure there is someone else in the room who can give more accurately the date.

Q. This year?

A. Yes.

Q. Are the busses used on the Pentagon service used during the day on service about town?

A. The busses used on Pentagon are not required during the day. Now, as to whether some bus that went out on Pentagon

went into the line and another bus came off the line, I would not say, speaking of individual busses. But they are not required, the busses that are used on Pentagon are not useful on the system for any other part of the day.

Q. Well, that was not my question. Do you know whether they are used?

A. I do not know.

Q. So far as you know they may be used extensively?

A. I will not answer the question. I have said that
792 I do not know.

Lt. MATHEWS. That is a perfectly proper question. I would like to have the witness answer it.

The WITNESS. I did not mean to make a point of it. I thought my first answer was an answer to both questions.

Lt. MATHEWS. Who does know?

The WITNESS. Well, I do not know. What you would have to do, as I understand it, to follow through would be to follow through the bus that was used on Pentagon and see if they were perchance used on some other part of the line.

By Lt. MATHEWS:

Q. Well, how in the world——

A. Now, I know definitely and have testified that we require a certain number of busses in the base period and a great many more in the rush period and we could, if the Pentagon service were not there, there would be a number of busses that would not be required if the rush service were not there; in other words they would not be required during the rest of the day.

Q. I understand.

A. Now, as to whether some of those busses that happen to be out there in rush hours will also run through the rest of the day, I do not know. I would say that they might readily.

Q. All right. Now, do you know whether or not the busses that operate on the Pentagon for Pentagon service operate another rush-hour service?

793 A. Yes.

Q. What number?

A. I know that definitely to be a fact.

Q. Do you know what part of them do?

A. I know that in the figures for July where I have set up 97, which included spares, I know that in that month there were two of that total that were used only for Pentagon and the rest were used in other rush-hour services of company.

By Col. BARRON:

Q. Well, it may very well be then, that if we had the facts from some officer of the company that is familiar with them, that

the busses actually allocated and used in that service are very insignificant, compared to what they are on other services?

A. Colonel, there is no officer better qualified to answer the questions that have been asked here of this witness with respect to the bus cost, the base cost, the payrolls, and the equipment, and so forth, all that information passes through my department, and I have told you and I have explained that these busses are the peak busses that are required in peak hours, and that number of busses is not required in the base period, and I have also said that there may be individual busses that would not be required for the base service that may actually go into the base service, in which case a bus that would come out of the base and go into the substitute line, and when you get through, this does not
794 rest so much on an individual bus as it does on the number of units that this service requires, and whether it is Capital A unit or Capital B unit is not significant.

By Lt. MATHEWS:

Q. Now, do you make any count of the people that use the Capital Transit?

A. Yes, sir.

Q. And how is that done?

A. Done by small counters that are fastened usually to the fare box.

Q. And who does the counting?

A. The operator.

Q. Do you employ any separate personnel for the purpose of counting?

A. No.

Q. Why did you use that—I know you have covered this—but I am interested when I say why did you say that per mile depreciation for the system would not apply to the Pentagon?

A. Because the per mile for the system is obtained by the bus and the rush service use of the bus throughout the day. The Pentagon is a rush use, a rush-hour service, the miles operated, the busses required for such a service would be less than the miles operated by a bus that is out for 20 hours in a day, consequently, the per mile depreciation cost of such a bus will be higher, higher for the rush-hour bus.

795 Mr. DUNLOP. Be higher for the shorter hours whether it is on the Pentagon or anywhere else, wouldn't it?

The WITNESS. That is correct.

Capt. DAVIS. There is one other question we have, of general character, Mr. Heberle, I neglected to ask.

By Capt. DAVIS:

Q. Mr. Heberle, are you familiar in general with the petition in which the War and Navy Departments filed requesting the Commission to require the respondents to produce certain documentary evidence; this petition was filed on August 28.

A. I am generally familiar.

Q. Now, have you given, either in your testimony or in the other evidence presented in the record, all of the information which can be given by your company in response to this petition?

A. Well, so far as my personal knowledge goes, but you, I believe, framed the petition. If there is any other question proper in the case you can ask it.

Q. Well, I was asking with reference specifically to the specific request.

In other words, you have given everything you feel can be done within any reasonable length of time to furnish the information requested in this petition?

A. Yes; and I have also answered all the questions to the best of my ability that you have asked about, Captain.

Q. You attempted in Exhibit 89 to give most of this
796 information?

A. In Exhibit 89 I am attempting information that has been asked here and elsewhere and also have been subject to any other question that you might ask that would properly be answered by me.

Q. When was this Exhibit 89 prepared, Mr. Heberle?

A. Oh, I would say just within the past months.

Mr. DUNLOP. It has a date on it.

By Capt. DAVIS:

Q. I just wondered—9-1-43.

A. Yes; but that is the date that it was typed.

Q. Did you personally prepare this?

A. In part, and prepared by one of my assistants under my direction, so far as the rest of it is concerned.

Mr. QUIRK. How many times do you go around the table?

Mr. WHITTLESEY. Mr. Heberle, today Mr. Awalt asked you a question based upon your average number of miles per year, and you arrived at a depreciation period of 25 years based on 2 cents.

If you base that, if you made a different calculation based upon 8⅓ years, you would arrive at 6 cents, would you not?

The WITNESS. That is correct.

Mr. WHITTLESEY. Now, is 8⅓ years anywhere close to the normal depreciation that the company takes?

The WITNESS. Well, it is closer than 25 years. We use,
797 we are using nine years as our life on busses at this time.

Q. So that if you took that rule of thumb statement that was made here you would come within two-thirds of a year in arriving at a depreciation rate of 6 cents per bus mile?

A. Yes.

Q. And I notice on your exhibit 89 you have a rush hour depreciation rate of 6.74 cents.

Is there very much difference between that rule of thumb statement and the statement that you make on Exhibit 89?

A. Those two figures, or those two amounts are not comparable, because, as I explained in presenting the statement of depreciation here, the 6.74 is not the amount of depreciation per mile for the busses to which the $28,791 relates.

You see, I tried to make that clear in putting the statement in that you must put rent of equipment and depreciation together here, and when you add the two together you have got a figure of rental of equipment and depreciation, and it is partly depreciation and partly rental of equipment.

The 6.74 is a smaller figure than is actually included in that depreciation because depreciation is included for only part of the busses, but the factor that is applied to it is the miles, the miles of all the busses, so it reduces that figure.

Q. Now, a bus used solely during the rush-hour period is kept for that purpose by the company and has a higher rate of
798 depreciation, does it not, I mean a higher depreciation cost for this use than a bus that is run in the base period?

A. It has a higher cost per mile.

Q. Actually the companies set up their depreciation on a time basis, do they not?

A. Yes, sir.

Q. So that you bring depreciation down to a mileage basis solely for convenience of expression, is that not true?

A. I am sorry, will you please give me that question again?

(Question read.)

The WITNESS. Well, it is one of the expressions that is used to set up an income statement in cents per mile, is a common way of setting it up.

If you are thinking of depreciation, you think of it normally in terms of years, at least we do, as to our own, and not in terms of miles.

By Capt. DAVIS:

Q. So that if you have a spot that requires four times as many busses to meet the rush-hour period as it requires to meet the base day demands, you have to telescope into those rush-hour periods the cost of depreciation, do you not?

A. Well, if you are building or attempting to build depreciation costs in rush-hour period, you take the depreciation on such busses or units as are exclusively required for those rush-hour periods.

Does that answer your question?

799 A. Yes, sir.

Q. With regard to these Defense Plants busses, that contract was very advantageous from the standpoint of your company, wasn't it?

A. It was, from one viewpoint.

Q. Lastly, can you give us any statement or estimate of how much it would cost, per mile to use those busses exclusively on Pentagon service insofar as this rental charge is concerned?

A. I do not know whether I could make that calculation or not. To use those busses exclusively in the Pentagon service, I think I would have to have some information that was talked about this morning, where we would have to find out how many busses would be required for the Pentagon service if that service were an exclusive service.

Now, it would be a greater number of busses than I have here, because this is a more economical use of busses.

So, I would have to know first, how many busses, then I would be required to give these miles——

Q. Well——

A. Now, we could figure out the miles, that is, we would have to go to the contract and we would find out for that many busses, we would get the minimum payment of $1,500 per bus; now, that would be one element that might be an important factor in determining what your cost would be as far as busses are concerned.

800 Col. BARRON. You do not mean to say that this is an exclusive service that would require more than 97 busses?

The WITNESS. No, Colonel Barron. I thought I had explained as to the 49 busses, and the figures that show this might run up to 60 would seem reasonable.

Mr. WHITTLESEY. Right on that subject, Mr. Herberle, do you have any information as to how many busses it would require if you were just providing a service for Pentagon and Pentagon alone?

The WITNESS. I have not.

Mr. WHITTLESEY. Getting back to this Defense Plants——

Mr. DUNLOP. If you are getting back to that, Mr. Whittlesey, may I ask a clarifying question?

Mr. WHITTLESEY. Yes.

Mr. DUNLOP. When you were asking the question if you used these Defense Plants busses exclusively for the Pentagon business,

did you mean to ask if you used all of the Defense Plants busses exclusively for this service or did you mean to say if you used Defense Plants busses as far as they were necessary exclusively for that purpose?

Mr. WHITTLESEY. No, but I will——

Mr. DUNLOP. Would you explain it?

Mr. WHITTLESEY. And I will ask the witness another question, I think we can clear it up in just a moment.

By Mr. WHITTLESEY:

801 Q. In going over your records, you discovered, did you not, that you could charge the total use of two busses to this service?

A. Correct.

Q. Now, one bus could make at best, as I understand your statement, only two trips to the Pentagon during the rush-hour period?

A. No; I don't believe that that could be said that I have testified to that, because I do not know that, I do not know that that is true.

I said that they might make one or two trips and I will now say, if I didn't, I will say that they might make more than two trips to Pentagon, I do not know, it depends on the length of the service, when they get started, and when it ends.

By Col. BARRON:

Q. As a matter of fact, though, they make three or four, some of them, don't they?

A. Your knowledge is probably equal to mine, and I certainly would not say anything different.

Col. BARRON. Well, we will show that from some other witness.

The WITNESS. Yes, I will say that they could make that, Colonel, if that will help you.

By Mr. WHITTLESEY:

Q. Have you been advised the distance or do you know the distances, average distance of the bus trip on those two lines?

A. Approximately 7 miles, round trip.

802 Q. Now, at the rate of 5 cents an hour, I mean 5 cents a mile, how many trips would one of those Defense Plants Corporation busses make in order to arrive at $125.

A. Approximately 357.

By Capt. DAVIS:

Q. And that is over what period?

A. It would not make any difference. His question was 5 cents per mile and 7 miles for a round trip, how many round trips would be required to add up to $125.

Mr. DUNLOP. The answer was 350?
The WITNESS. Approximately 357.

By Mr. WHITTLESEY:

Q. Do you have any service into the Pentagon on Sunday?
A. Some, a much smaller amount than on week days, practically negligible on Sundays.
Q. So that if we took the 357 trips and divide that number by 30 days, you would have an average of about 10½ trips per day, wouldn't you?
A. Well, around 12 per day would be 360 as compared with 357.
Q. That is right. Is not that number 12 about twice as high as the maximum number of trips that could be obtained during the rush hour period by the use of a bus shuttling back and forth?
A. I would say that it was maybe 50 percent more than twice.
Q. All right.
803 A. Excuse me. Twice would. One half of 12 is six and 6 times a half hour per round trip is 3 while the busses have roughly 2, somewhat less. If it is 3 why then it would be twice, if it is 2, why, it would be more than that.
Q. So that in this rough sort of way we have been talking here it would amount to about 7½ a mile, then, if you charge that bus exclusively into Pentagon, as far as depreciation is concerned; isn't that correct, sir?
The WITNESS. May I have that question?
(Question read.)
The WITNESS. That seems to be approximately correct from mental calculations.

By Mr. WHITTLESEY:

Q. Well, then, possibly we might arrive at the conclusion, could we not, sir, that your statement of 1.84 on Exhibit 89 is, shall we say, conservative?
Lt. MATHEWS. I want to object to that and at the same time move to strike this whole of questioning as having no possible application to either this testimony or to this case, based upon hypotheses, and shall we say, one thing and another that just aren't the facts and have no possible relevancy.
Commr. PATTERSON. The objection is overruled.
Mr. WHITTLESEY. Mr. Commissioner, we will join with the motion, sir——
Commr. PATTERSON. Go ahead with the examination.
The WITNESS. The answer to the question is that the two
804 figures can not be compared——
Mr. WHITTLESEY. All right now——

The WITNESS. For reasons that I have explained with respect to the depreciation figures.

By Mr. WHITTLESEY:

Q. Now, you do have a Pentagon operation, do you not, sir?

A. Yes, sir.

Q. And you have presented costs or estimate of that service as nearly as can be determined by your books and records?

A. Yes, sir.

Q. So that all the answers that you have made whether on this side of the table or the other side of the table have been calculated with respect to the service to the Pentagon on a basis which is contrary to practice. Is that correct, sir?

A. I would say so.

Exam. MATTINGLY. If the rest are through I would like a little more enlightenment on this depreciation proposition.

The WITNESS. Yes, sir.

Exam. MATTINGLY. These 97 busses that you referred to——

The WITNESS. Yes, sir.

Exam. MATTINGLY. For what period——

The WITNESS. Those are the——

Exam. MATTINGLY. Did you use?

The WITNESS. I beg your pardon; those are the busses required in the maximum period of time, that is, of each of
805 the week days, and 97 busses were for the month of July. That is the average per day for the month of July.

Exam. MATTINGLY. The average per day for the month of July, is that it?

The WITNESS. It was determined by taking the maximum of busses required in each week of the four week period and dividing by four.

Exam. MATTINGLY. Well, would it make any difference in the figures whether you used one bus or another, if you happened to use one bue one day and another bus another day, did that count as two busses of the 97?

The WITNESS. It does not.

Exam. MATTINGLY. It does not.

The WITNESS. The only reason that I had in this calculation for going into and finding out what busses, what individual busses were used, was to get an average cost per bus, and find out the investment for depreciation purposes, and also for a return, so that for that purpose I went in and actually the number of the busses without respect to that 97, because I might have more than that. We had had them taken out, and I set them up in the cost group, and then I determined an average cost per bus, when I finally arrived at the number of busses that were required to use, the number for the purpose of getting at the depreciation phase.

806 Exam. MATTINGLY. Yes. Now, as I understand, in connection with this depreciation you also included the rent of such busses as you determined were employed in this service?

The WITNESS. No, Your Honor.

Exam. MATTINGLY. How did you do that?

The WITNESS. I excluded those. I made another study to find out on the average how many of the rented busses were used down there and it was 18.

Now, in the month of July the number of busses was 97, it was a varying figure for other months, but I took 18 from that 97 and brought it down to 79.

Then I found that the depreciation costs on 18 were going in under rented equipment.

Now, I am working on 79 busses and the actual mechanics were that I applied to the 79 busses the average cost per bus which I recall was $11,281 and that gave me the investment in busses, and I cut that in two so as to get one half in here, because these busses were being used both on our own run and on Pentagon, so I cut it in two and then figured depreciation on that one half, and that is what I have been talking about.

Now, I might say this, Your Honor, because I didn't finish, with respect to the 18 busses, we also cut that in two because that is part of the 97.

In each case in this period of 7 months, July was the only month when I found two busses that were exclusively used
807 in Pentagon.

The other months there was one month, with the exception, I think, of January, when there wasn't any, so in the overall, I made the statement at one time that there was an average of one, but I have used July as my basis for explaining how it happened.

In that month there were two such busses and the other thing was that I made all these calculations with respect to each month and then I aggregaged them and got these total dollar figures.

Exam. MATTINGLY. Now, with respect to the rent on a bus mile basis, did that amount to more or less than the depreciation?

The WITNESS. I would be, it is rather hard for me to answer that because we just——

Exam. MATTINGLY. You calculated it separately, didn't you?

The WITNESS. I beg your pardon?

Exam. MATTINGLY. You calculated it separately?

The WITNESS. Yes, sir. And on those 18 busses I got the total miles for the 97, and I made no effort to see how many miles the 18 were run, but the bus rental is $125 a month.

Exam. MATTINGLY. Yes, I realize that.

The WITNESS. So that I have been unable to state how many miles were run by a rented bus, but I did get this 10.39 which applied to the 120 busses for the contract period
808 ended June 30th, and for the number of miles, and the rental for that first contract period the average was 10.39.

Now whether that would be less or more, because of the number, I did not use 10.39 in that case, I used $125 a month on 18 busses, and then cut it in two, but it will be found, and recheck of the figures here should show, it should be $125 a month, that is 7 months, on 9 busses instead of 18.

That is a very easy calculation, at $125 would be $875 a month, 9 busses on that is $78.75 and that is what I have got in here.

Exam. MATTINGLY. The computing of it is easy but I am just a little confused as to how you reduced that to a bus mile basis.

The WITNESS. Well, the figures I do not have in bus miles. If you are thinking of the cents per mile, that I have opposite it.

Exam. MATTINGLY. That is it.

The WITNESS. Well, now, that, I have tried to say, is almost misleading, that if you want to find out the two you must take depreciation and rent of equipment together, and I think I have fairly tried to tell everybody that it is not a correct statement but just a convenient way of going about a column here, and taking dollars and dividing by miles.

Now, if I had used—I don't know what the answer would be if I had forgotten about the two rented busses and just
809 figured them all on this $11,281, I don't know, if the Commission desires, I will make that calculation, and I set this charge off because I felt that that was the question that was going to come up sometime, somebody was going to ask me about the use of busses.

Commr. PATTERSON. Well, it would not change the result very much one way or the other if you only include one rented bus?

Mr. WHITTLESEY. That figure that he has there is entirely too low, that doesn't give a representative cost at all.

I have contended that throughout because of the fact that he has taken a cost here, a minimum cost, and allocated it to one operation where it is impossible for that operation to result in the miles that would develop that minimum cost.

If actually you are going to use the cost per mile for that, it would run about 7.5. The saving grace of the witness' testimony is to the effect, though, that a cost per mile is not much more than an expression of convenience.

Commr. PATTERSON. Well, of course, nobody could live on a depreciation cost of 6.4 cents per bus mile.

That is true, isn't it?

Col. BARRON. It certainly is.

The WITNESS. Counsel is—I would rather talk to him off the record and get him straight on that.

Col. BARRON. We will have some additional cross-exam-
810 ination after we have had some time to go into the exhibit, but with that understanding, of course, we are through with him at this time.

And I will amplify this motion later on and put it in writing.

I move to strike the exhibit because it is manifestly incorrect, incompetent, and based upon unreasonable estimates and hypotheses.

We will go ahead and amplify that motion and put it in writing if it is agreeable.

Mr. QUIRK. I can not restrain myself——

Commr. PATTERSON. The motion will be taken under consideration.

Mr. QUIRK. I can not restrain myself, apropos of that motion. I knew when Colonel Barron asked for that information that after he had it he wouldn't want it.

Commr. PATTERSON. We will recess for five minutes.

(A short recess was taken.)

Exam. MATTINGLY. Did you get through with Mr. Heberle?

Col. BARRON. Yes; for the time being.

(Witness excused.)

Col. BARRON. Now, Mr. Locke, we asked him some questions this morning and he said that he would prepare the calculations.

DEAN J. LOCKE resumed the stand and testified further as follows:

811 Direct examination by Col. BARRON:

Q. Have you prepared the computation on the question I asked you this morning about the six months' period figures there?

A. Yes; you asked for a figure concerning the afternoon rush hour.

Q. Yes, sir.

A. An analysis of the figures shows an average of 61 busses in the half hour period in the afternoon.

That compares with the 57 which I quoted this morning and calculated on the stand.

Q. Yes.

A. For the morning rush.

Q. That is 57 different busses or just 57?

A. No, that is the average number of trips in the half hour period.

Q. I just wanted to be sure about that.

Now I ask you to make some computations.

A. Those have not been completed but will be shortly.

Col. BARRON. That was all, I believe, I intended to inquire about.

Mr. AWALT. I would like to ask a few questions if I may.

Cross-examination by Mr. AWALT:

Q. Mr. Locke, you testified about traffic accounts and so forth, as I understood it.

Have you recently supervised a traffic count on the Pentagon service?

812 A. Yes, I have.

Q. How was that conducted, and when was it made?

A. A two day by day count of Pentagon service and traffic was made under my supervision on Wednesday, August 4th, and Friday, August 6th, 1943.

This count was made by stationing some 50 professional traffic checkers of the four companies concerned in this proceeding, at strategic points along the bus routes serving the four employment centers.

Records were made of the time of each bus, the capacity of each bus, and the number of passengers thereon.

Observations also were made, with the assistance of the bus drivers, and through the records of the turnstiles of the Pentagon Building, and the number of passengers riding on certain designated rates of fare, so that we might obtain details in each classification out of the count.

Q. Have you prepared an exhibit?

A. Yes, I have.

Q. Do you have those exhibits?

A. Yes, and if your wish, we will submit them for identification.

Mr. AWALT. I do.

Lt. MATHEWS. 90 is the next number.

Mr. AWALT. Mr. Commissioner, I offer this for identi-

813 fication as exhibit marked Exhibit 90.

(Capital Transit Exhibit 90, Witness Locke, marked for identification.)

By Mr. AWALT:

Q. Mr. Locke, will you please explain that exhibit?

A. The exhibit, Exhibit 90, is a three page summary showing trans-Potomac weekday rides between the District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport on Wednesday August 4, and Friday August 6, 1943.

Page 1 shows a total inbound and outbound rides while page 2 shows inbound rides only, and page 3 outbound rides only.

On each page are shown the number of rides in each rate classification for each company for each of the four employment centers.

The individual totals of each of the two days are shown together with the average of the two.

The totals for the 24-hour periods are subdivided as between periods of the day, such as morning rush hour, mid-day, nonrush hour, evening rush hour, even nonrush, and owl.

Q. Does Capital Transit Company run busses in the suburban areas outside the District Line Terminals.

Mr. AWALT. I am not familiar, Mr. Commissioner—whether this should be offered in evidence now or later.

Commr. PATTERSON. Offer it now.

814 Mr. AWALT. May I tender it, offer it now?

Commr. PATTERSON. It may be offered now.

Mr. AWALT. I offer it in evidence as Exhibit 90.

Commr. PATTERSON. In the absence of objection, it will be received now also.

Col. BARRON. I do not know its materiality or its accuracy. I would like to reserve the right to objection, there is no question of materiality if it is correct.

(Capital Transit Exhibit 90, Witness Locke, received in evidence.)

By Mr. AWALT:

Q. Mr. Locke, does the Capital Transit Company run busses to suburban areas outside the district?

A. Yes.

Q. Out into Maryland?

A. It operates a total of some 18 lines in the suburban areas outside the District of Columbia.

Q. On what system are the fares fixed on these suburban lines?

A. The fares are fixed on a zone system which has been approved by the Public Utilities Commission of the State of Maryland.

Q. What are the fares of these first zones?

A. Well, the suburban system has not yet been made completely uniform. The basic plan is 5 cents cash fare and

815 a 4-cent ticket rate, 12 rides for 48 cents, for approximately 1½ miles.

On certain of the lines, namely, of Prince Georges County, the cash rate is 10 cents per zone, but the zones are about double those now prevailing on the lines where the 5-cent rate is in effect.

Q. What are the distances of the first zone?

A. On Route O–1, the Kenwood, Edgemore, Bradley Boulevard Line, having a first zone length of 3.87 miles, the cash fare is 10 cents, and there is no reduced rate ticket fare.

Route T–6, Montgomery Bus Lines, the first zone length is 1.8 miles outbound and 1.2 miles inbound, and there the 5-cent cash fare is found with a 4.6-cent ticket rate obtained by purchase of 12 tickets for 50 cents, good for the calendar week.

On the T–8 route, out of this line, the same zone lengths and rates are found.

On the L–6 and 8, Connecticut Avenue line, we find the first zone of 1.78 miles extending to Chevy Chase Lake, and there we have 5 cents cash rates and a 3-cent ticket rate, the latter obtained when 100 tickets are purchased for $3.00.

On that branch of the Connecticut Avenue line extending to Rollingwood, the first zone length is 1.83 miles, we have the 5-cent cash and the 3-cent ticket rate above mentioned.

On the Z–2 Silver Spring-Connecticut Line to Forrest Glen, we have a zone length of 1.25 and 5 cents cash rate and a 4-cent
816 ticket rate obtained by purchase of 12 tickets for 48 cents good for the calendar week of purchase.

On the Z–4 Silver Spring-Connecticut Line to Four Corners, we have a 1.45-mile first zone with the 5-cent cash and 4-cent ticket rate just described.

On the Z–6 Silver Spring Community line via Franklin Avenue, we have a first zone length of 1.8 miles and a 5-cent cash 4-cent ticket rate just described.

On the Z–8 Silver Spring Community Line via Blair Avenue, we have a first zone length of 1.5 miles in which the 5-cent cash and 4-cent ticket rate are applied.

On the T–2, Takoma Maryland Line via Blair Avenue we have a 1.35 mile length of zone with 5-cent cash and 4-cent ticket rate.

On the T–4, Takoma Maryland Line via Carroll Avenue, we have a first zone length of 1.25 miles, a 5-cent cash rate and a 4-cent ticket rate.

On the T–3, New Hampshire Avenue Suburban Line, we have a zone length of 1.21 miles with the 5-cent cash and 4-cent ticket rate.

On the F–6, Green Meadows Line, we have a zone length of 1.67 miles with the 5-cent cash, 4-cent ticket rate.

On the F–2, Hyattsville, College Park Line, we have a zone length of 3.61 miles, cash rate of 10 cents, ticket rate of 8⅓ cents, 3 tokens being sold for 25 cents.

On the GR, Green Bus Lines, we have a zone of 2.32 miles
817 with a 10-cent cash fare and a 7.5 cents ticket rate obtaining when purchasing 4 tickets for 30 cents.

On the B–2, East Washington Suburban Line to Riverdale, we have a first zone length of 2.82 miles, a 10-cent cash rate, and 8⅓ token rate when purchasing 3 tokens for 25 cents.

On the B–4, East Washington Suburban Line, East Riverdale Bus, we have 3.04 miles zone length, 10 cents cash fare, 8⅓ token rate.

And finally, with the B–6, East Washington Suburban Line to Cheverly we have a 3.78 mile zone length with 10 cents cash fare and 8⅓-cent token fare.

Mr. AWALT. No further questions.

Mr. DUNLOP. Have you copies of that?

The WITNESS. No; I do not have, sir.

Redirect examination by Capt. DAVIS:

Q. On that last one, Mr. Locke, you have a pass also, don't you, on that Cheverly line?

A. Well——

Exam. MATTINGLY. You have passes on quite a number of them, don't you?

The WITNESS. That is right. Not on all of them but on certain of them.

By Capt. DAVIS:

Q. Will you just tell us briefly how your pass works on
818 the Cheverly line and on any other of the principal ones, if they are different.

A. The weekly pass available on certain lines in Maryland is known as an interstate weekly pass, and consists of multi-part pass, the main portion of which is the District of Columbia, $1.25 pass and additional coupons, one coupon each for each of the zones going out from the District Line.

Each additional coupon is sold at 25 cents.

The purchase is made at the continuous strip, and, of course, the coupon may not be separated. In other words, the District weekly pass within the District of Columbia, and the first Maryland zone is sold for $1.50, and $1.75 where two Maryland zones are involved, $2.00 where three Maryland zones are involved.

Q. All these lines go into suburban areas where you have got ticket service rather than heavier traffic like you have in town?

A. These are suburban and rural lines in which the traffic is increasingly thin as one goes out from the District Line.

Q. And you can afford to offer a dollar and a half fare?

A. Mr. Heberle, I think, should comment on whether or not the company can afford such a basis.

By Capt. DAVIS:

Q. Well, these passes have been instituted voluntarily by the company?

Exam. MATTINGLY. Just a minute. Have you finished your direct examination of Mr. Locke?

819 Mr. DUNLOP. I think perhaps Mr. Locke will give a little bit more explanation of this exhibit maybe showing what these various fare rates represent, he did not do that.

The WITNESS. I had rather hoped that this exhibit was so clear that it would speak for itself.

Mr. DUNLOP. Well, if it is understood, all right.

Col. BARRON. I am very glad to have this evidence, I think it is very helpful to our contention.

Mr. HILL. Might be misled about that.

Re-cross-examination by Mr. HILL:

Q. Let me ask you one question, Mr. Locke, in your second column on the first page, Exhibit 90, immediately under the figures August 4, 1943, you show 5 cents and the number sign, symbol, that you explain at the bottom as "This 5-cent fare only in conjunction with other District of Columbia fares."

Your first figure underneath that column opposite Arlington and Fairfax transportation is 285.

Do you know what passengers that represents? It is not plain to me.

A. Yes; that is the number of passengers riding A and F between Rosslyn Plaza and either the Pentagon or Navy Annex buildings.

Q. Yes. Annex Building——

820 A. Yes. Who have been identified by the count as having gotten out of Capital Transit vehicles upon arrival at Rosslyn and having boarded these A and F vehicles for this distance.

Q. But you did not mean by this exhibit by this exhibit that there was any requirement that they produce evidence that they had ridden within the District?

A. No, I did not mean that.

Mr. HILL. Thank you.

By Mr. QUIRK:

Q. Mr. Locke, on page 2 from the Army Air Forces Annex, or on page 1 of your Exhibit 90, I notice on August the 6th, for example, that there was a total of 1,304 passengers that paid the 10-cent fare as against 1,220 that paid 7½ cent fare. Have you any comment to make on that?

A. No, sir, I haven't. Those purport to be the facts as observed.

Q. On August 4th, the passengers paying the 10-cent fare and those that paid the 7½-cent fare seem to be equally divided.

A. I think with what I do know about fluctuations day by day, that these variances between the two days are what might be expected.

Q. Oh, I didn't mean that, but it is rather curious, isn't it, in view of all this excitement about fares, about 50 per cent of the folks over there were ever interested in the 7½-cent fare as against the 10-cent fare?

Capt. DAVIS. I think that was sufficiently explained by
821 the testimony this morning about the difficulty these people have in buying these tickets.

Mr. QUIRK. Well, we will show that there isn't any such difficulty.

The WITNESS. Of course, I personally don't know.

Mr. QUIRK. How do you suppose these other folks got it?

Capt. DAVIS. I don't say they couldn't get it, I said there were apparently some difficulties, according to the evidence.

The WITNESS. I personally don't know what controls the distribution between the two rates.

Mr. QUIRK. That is all I have.

Exam. MATTINGLY. Do you have any further cross-examination?

Redirect examination by Capt. DAVIS:

Q. How was that division obtained, Mr. Locke, if you know, as between the 7½- and the 10-cent ride?

A. That was obtained with the assistance of the drivers on the busses who gave the traffic checkers upon arrival outbound at the Army Air Forces Building the information as to the number of tickets collected on the particular trip.

Those who paid the 10 cents were the difference between that number and the number counted as getting off the bus, and of course, the reverse was taken in obtaining the figures relating to people departing from that terminal, except that
822 the checkers were able to observe how many paid tickets and how many paid the cash fares.

Q. Going back to your testimony about these fares in the zones in Maryland, Mr. Locke, were those arrangements out there made by voluntary action of the company or made by, as a compulsory requirement of some regulatory authority?

A. Like the institution of the weekly pass in the District of Columbia, that was a voluntary installation of the company.

Q. And did I understand you to indicate that that applied to all these zones in Maryland?

A. Oh, no, indeed, it is only a selected few and perhaps in the interest of accuracy, we ought to describe which lines these weekly passes apply to.

As a matter of fact, recent proceedings before the Public Service Commission of Maryland, have included the abolition of the weekly pass.

That project was interrupted by the war. There were passes on certain other lines which have been abolished. Those that we now have are the residue which have not been dealt with.

By Col. BARRON:

Q. There has been no proceeding resulting in the abolition of the pass, was there?

A. Let me check that. The weekly pass was, if my memory is right, was formerly available on the Alta Vista Bus Line and was eliminated when the fare structure was revamped.

823 Mr. DUNLOP. By order of the Commission, by order of the Public Service Commission?

The WITNESS. By order of the Public Service Commission, after public hearing.

By Col. BARRON:

Q. On your application?

A. Yes.

The line, bus lines on which the weekly pass is now found are the F-2 Hyattsville-College Park, the East Washington Suburban Line and its three branches, the Connecticut Avenue Line and its three branches, and the Green Bus Line.

Col. BARRON. That is all we have. No further questions.

Commr. PATTERSON. No further questions?

Then the witness——

Mr. WHITTLESEY. I have one question, sir.

Re-cross-examination by Mr. WHITTLESEY:

Q. On those Maryland routes where you have those passes in effect, do you have service throughout the day?

A. Under normal conditions, yes. We are not in a normal period of operation at the moment.

Q. So that you have base revenue as well as rush-hour revenue?

A. Yes.

Q. Out there?

A. That is right.

Mr. WHITTLESEY. That is all.

824 Col. BARRON. Base revenue, I suppose, outside of morning and afternoon rush hours, is rather light, isn't it?

The WITNESS. It is comparatively light; yes.

Commr. PATTERSON. If there are no further questions you are excused, Mr. Locke.

(Witness excused.)

Col. BARRON. We have one other witness, I believe the Capital Transit was making a compilation. Is that ready?

Mr. LOCKE. Apparently not.

Col. BARRON. Will you check that?

In the meantime, we probably, we only have a few questions to ask some of the other company executives.

I notice that Mr. Arnold is here, who might be used at this juncture.

Commr. PATTERSON. All right. You may call Mr. Arnold.

JOSEPH L. ARNOLD was sworn and testified as follows:

DIRECT EXAMINATION

The WITNESS. Joseph L. Arnold; Washington, Virginia and Maryland Coach Company, vice president and general manager.

By Col. BARRON:

Q. Mr. Arnold, state in a general way where your lines operate, from what points to what points, what Army installations they serve.

A. Our lines, in reference to the Army installations, to the Pentagon Building, I think that is what you are talking
825 about today.

It also operates to points into northern Virginia, such as Falls Church and as far out as Fairfax.

Q. Do they cross the District of Columbia?

A. Yes, sir.

Q. What are your main stopping points here in the District?

A. Main stopping points, of course our terminal is at 11th and E.

Q. Yes, sir. Where does most of the traffic that you take to and from the Pentagon Building emanate, I mean, just what areas?

A. Yes, and mostly I would say right directly downtown.

Q. You haul them from the District and also from Virginia?

A. Well, we only have 15 busses; we only have 15 busses in the evening and 3 in the morning which——

Q. And they all carry passengers at the Pentagon Building?

A. That is right; yes, sir. In other words, when you show 2 in the morning, why, sometimes we only have two or three on, so therefore we don't haul many people from the building or to the Pentagon.

Q. That is just an incidental operation of your line?

A. Yes, sir.

Q. When you discharge passengers there, coming from the District, what is the terminus of your line in that direction, where are those passengers let off?

826 A. Well, those busses could be headed towards probably Clarendon, Ballston, or up there, maybe, or up along the Lee Boulevard.

Q. Yes.

A. And naturally we have to go a little off our route to get to the Pentagon Building?

Q. How many miles do you have? What is the total system mileage?

A. I think that runs around 80 some miles. I think that is what it is.

Q. Will you describe your rate structure, what your fares are from the district points to the Pentagon Building?

A. Our rates from the district to the Pentagon Building?

Q. Yes.

A. Ten cents.

Q. Now, that is from any point in the District?

A. Yes, sir; that is, of course——

Captain DAVIS. Any point you operate.

The WITNESS. Yes, sir, that is true, from any point we operate.

By Col. BARRON:

Q. Could you give a descript on generally of your rate structure, I mean what are your different rates?

A. Of course, we have 10 cent zones and 15 cent zones and 20 cent zones.

Q. What you call your 10 cent zones, what territory does
87 that encompass?

A. Do you mean mileage?

Q. Yes, just where is that?

A. The 10-cent zone goes to Roosevelt Street, and it is at different points.

You take one zone on Washington Boulevard, that would be Roosevelt Street, and of course our mileage I think is a little less than around 7, 7½ miles.

I might say this, if you want the exact mileage for each zone, I will be glad to furnish it, very glad to furnish it.

Mr. LANE. I might suggest at this point that we have now prepared an exhibit which will show most of the operations. If it will be helpful we will be glad to produce it.

I didn't bring it today.

The WITNESS. Why, I could do that, too.

Col. BARRON. Well, if you could put that in by some map or exhibit, which, it would save quite a little time.

The WITNESS. Yes.

By Col. BARRON:

Q. How were your rates established, I have particular reference to the rates from the District to the Pentagon Building, and any other rates you have to the Pentagon Building.

A. Well, of course, we were asked to operate in there, or it was suggested to us, I should say, and of course we did get permission from the I. C. C., and it is purely an emergency
828 operation, for the emergency. And it is, we consider, in our 10-cent zone, and nobody has ever questioned us in reference to our zone, in our 10-cent zone.

Q. Was that 10-cent zone ever the subject of any rate proceeding, Mr. Arnold?

A. Not that I know of. I haven't heard of any, I don't think it was.

Q. That was a voluntary rate which you established and filed with the Virginia Commission?

A. Yes, sir.

Q. And I suppose with the Interstate Commerce Commission?

A. Yes, sir.

Q. To the extent that it operates within the District?

A. Yes, sir.

Q. Have you ever made a figure for your average bus mile cost for your whole system?

A. We have some figures and of course in reference to the Pentagon situation, we have a few people working on this right now, but as you know, there is some shortage of help and everything, and we will be able to give you these figures next week some time in reference to the Pentagon Building, showing just how many we hauled in there, and the cost, and so on.

Q. You will have that in an exhibit?

A. That is right.

Q. In other words, you are trying to make an allocation
829 as far as you can without too much work in reference to the cost and whether it is out of line?

A. Well, I think it would be rather accurate, because after all, we can show our figures to that point, because our busses go to that point, and we have kept track of it on our manifest as to the exact number of people hauled, and everything.

Q. Well, if your have done that you can make an accurate allocation?

A. I think we can have that by next week.

Mr. WHITTLESEY. It depends on what the Colonel means by allocation.

The WITNESS. I think that we will have it by next week.

By Col. BARRON:

Q. With reference to the passengers hauled and the equipment used.

A. To the Pentagon Building?

Q. Yes.

A. That is right.

By Capt. DAVIS:

Q. How is your service to the Pentagon, primarily by means of counter flow busses; in other words, do these busses which serve the Pentagon carry people, in the full load, in the other direction?

A. I might say this, that when we do have passengers leaving along the line and going to the Pentagon, sometimes we pick some people through there, and other times we go right
830 through and then they are rerouted at the stand to other sections of our line.

Q. So that when they come back, assuming that they start——

A. They don't come back to the Pentagon again.

Q. But when they go back to Virginia——

A. Yes.

Q. From the District, they are carrying a full load then?

A. I would not say that they were. Maybe sometimes they would be carrying full loads and then they may not.

Mr. HILL. Is that in the evenings?

The WITNESS. Yes, in the evenings; it would depend on what time in the evening.

By Capt. DAVIS:

Q. By and large your rush hours for your company are in the morning?

A. That is true, mostly.

Q. So, generally speaking, it is in the opposite direction between the travel from the Pentagon and the District?

A. I would say yes.

Q. Mr. Arnold, do you publish any annual reports to your stockholders?

A. Well, of course, our stockholders are very limited.

Q. Yes.

A. I think that I can count them on my fingers, there are four.

Q. You do not get out any annual report other than
831 that you file with this Commission?

A. No, we just call them in.

Commr. PATTERSON. You don't write them, you just call them?

The WITNESS. Yes, sir.

Capt. DAVIS. I was just inquiring whether you had any other report other than that which you file with this Commission, which has been introduced here?

The WITNESS. No, we don't, and that is the answer to the question, I believe.

Capt. DAVIS. That is all we have of Mr. Arnold at this time. We may have some further questions after we see this new exhibit. That is all.

Mr. WHITTLESEY. Pardon me. I have one question.

Cross-examination by Mr. WHITTLESEY:

Q. Your present 10-cent zone as presently constituted, did that have a different fare at one time?

A. Yes, sir; there was a different fare.

Q. There was? How much was that fare?

A. 15 cents.

Q. And when was that changed?

A. I do not have the exact date, I think—Oh, well, I could say this, that it was—I couldn't make a guess at it. I was around in the depression time, I think around 1930 or 1931 or 1932,
832 maybe the Interstate Commerce Commission has the correct date on that, but that was put in for reasons of everybody taking a 10 percent cut and the fact that Government employees took a cut that time and we reduced our fare from 15 cents down to 10 cents.

We didn't have to do it or we were not requested to do it, but everybody else was coming down at that time, so we reduced our fare to the 10-cent fare in the 15 cent fare zone.

Q. But it was never restored?

A. No.

Mr. WHITTLESEY: That is all.

Commr. PATTERSON. Just a minute, Mr. Arnold.

Did you state that you ran across the District?

The WITNESS. Across; well, there has been so much discussion about District line that I have one idea and maybe these other fellows have another idea.

Commr. PATTERSON. I was wondering whether you went across from Virginia into Maryland?

The WITNESS. Oh, no, sir. From the District into Virginia.

Commr. PATTERSON. Then you don't go across the District in the sense that you go out on the other side?

The WITNESS. No, sir. Our terminal is at 11th and E. That is as far as we go into the District.

Mr. WHITTLESEY. Then that perhaps calls for another question.

833 By Mr. WHITTLESEY:

Q. You had in mind when you said you would haul them anywhere in the District to the Pentagon Building for 10 cents?

A. I am sorry.

Q. That does not mean anywhere in the District, it only means a portion of the District?

A. That is right.

Commr. PATTERSON. Now, where is Roosevelt Road?

The WITNESS. Well, I would say that is about, to make a rough guess, it is about a quarter of a mile above Glebe Road. I could show you that on the map.

Commr. PATTERSON. In the District, how far do you come into the District; that Roosevelt Road is not in the District?

The WITNESS. No, sir. That is in Virginia.

Commr. PATTERSON. How far into the District do you run?

The WITNESS. Oh, I would say around, it would be from the bridge, Key Bridge to 11th and E, I should think around about three, three and a half to four miles, and sometimes we operate over the other bridges, too, sir.

By Mr. WHITTLESEY:

Q. Have you had another terminus in the District besides 11th and E?

A. Well, we had one at 9th and Constitution Avenue.

Q. And you also have a bus coming in over Memorial Bridge?

A. And from 14th Street Bridge; yes, sir.

Q. I mean your regular route.

834 A. Yes; Lincoln Memorial Bridge.

Q. Now, this Pentagon operation, that is off your regularly established route?

A. Yes, sir.

Mr. WHITTLESEY. That is all.

Exam. MATTINGLY. The pick up or let off of passengers are places in the District other than these terminals?

The WITNESS. We have; yes, sir.

Exam. MATTINGLY. I mean do you have authority?

The WITNESS. We can't pick up in the District?

Exam. MATTINGLY. That is what I mean.

The WITNESS. Coming in, that is right, sir.

Exam. MATTINGLY. What is the nature of your operation as to local pick up and let off?

The WITNESS. Why, in reference to that, we get a load, then we pick up in the Pentagon Building, we can let off in the District.

Our load is from 11th and E, coming out we can let off in the District going out.

Mr. DUNLOP. In other words, you have no intrastate rates in the District?

The WITNESS. That is right.

Exam. MATTINGLY. In the District?

The WITNESS. That is right.

Exam. MATTINGLY. But you do have in Virginia?

835 The WITNESS. Yes.

Commr. PATTERSON. I think that is all.

Mr. HILL. On the way out, Mr. Arnold, you can pick up anywhere?

The WITNESS. In the District.

Mr. HILL. In the District?

Exam. MATTINGLY. But you could take some on in the District and let them off, you said?

The WITNESS. That is right.

Mr. DUNLOP. Mr. Arnold, this service of yours to the Pentagon Building was recently established, wasn't it?

The WITNESS. Oh, yes, sir.

Mr. DUNLOP. At the suggestion of O. D. T. that on your counter flow operations you would stop at the Pentagon Building and go by the Pentagon Building in order to save tires and gas?

The WITNESS. In order to help out, an accommodation to the people that would be in the Pentagon Building.

I might say that that service was inaugurated December 7, 1942.

Mr. DUNLOP. Yes; but it was not any part of your regular operation?

The WITNESS. No, sir.

Mr. DUNLOP. You did not go over that route until the time you were requested to do so in the counter flow direction for this purpose?

836 The WITNESS. That is true, sir.

Comdr. PATTERSON. I think that is all. Mr. Arnold.

The Witness: Thank you, sir.

(Witness excused.)

Col. BARRON. We can probably get through with another one of these executives.

Here is Mr. Lane. Go ahead and ask him some questions.

FRANKLIN K. LANE was sworn and testified as follows:

Direct examination by Capt. DAVIS:

Q. Generally, Mr. Lane, where do your lines operate?

A. Throughout——

Col. BARRON. You had better let him give his name.

Capt. DAVIS. I beg your pardon.

By Capt. DAVIS:

Q. State first your name.

A. Franklin K. Lane, president of the Arlington and Fairfax Motor Transportation Company.

Q. Generally speaking, where do your lines operate, Mr. Lane?

A. Throughout the central part of Arlington County, Virginia, and in and out of the District of Columbia.

Q. As I understand it, you have prepared a map which you can supply for the record showing these operations?

A. There are maps prepared which will show the opera-
837 tions of the three Virginia companies which will be presented tomorrow morning.

Q. Fine.

Generally speaking, what is your fare structure with particular reference to these installations here involved?

A. As far as installations involved in this proceeding are concerned, the fare structure is 10 cents from any point on our line.

In the District of Columbia——

Q. And in addition you have a 5 cent fare, have you not, Mr. Lane?

A. For the certain 5-cent zones in Virginia but not in interstate commerce.

Q. Well, you have a 5-cent rate from Rosslyn to these buildings?

A. We have a 5 cent Rosslyn from Pentagon, and Navy Building we have a 5-cent rate from the intersection of Lee Boulevard, and Washington Boulevard to the Navy Buildings.

We have a 5-cent rate from the Navy Building to the Pentagon Building.

Q. Now, going from other parts of the District, well, let's say from parts of the District north of the Potomac; is your rate 10 cents in all cases?

A. From any place in the District of Columbia to the Pentagon building, it is 10 cents.

838 There is a 5-cent rate which was established from Lincoln Memorial Bridge, but we only operate to the Navy Building on that operation.

Q. Is it farther to the Navy than to Pentagon over that line?

A. No, sir; it is shorter by the route we travel.

Q. Now, where is the limit of your 10-cent zone; where does that extend?

A. To the end of our line.

Q. How far is that, approximately?

A. Approximately a little over 8 miles, from 12th and Pennsylvania Avenue to the intersection of Glebe Road and Washington Boulevard, in Arlington County.

Q. How were your fares established?

A. Our fares were established by filing with the Interstate Commerce Commission at the inception of the company in 1928. At that time the fare throughout this area was 15 cents and in the spring of 1933, as Mr. Arnold has testified, in cooperation, and in recognition of the cut in wages of the Government employees, the Arlington and Fairfax reduced the rate to 10 cents.

Q. Has that rate ever been the subject of any rate proceeding?

A. Oh, yes; in 1939, if I am not mistaken we had a rate case.

839 Q. And did that result in any change in your rate?

A. No.

Q. Will you tell us very briefly what that case was and and what it affected?

A. That was a case, a combination of the Arlington and Fairfax Motor Transportation Company, the Arlington and Fairfax Auto Railroad Company, and the Washington, Virginia, and Maryland Coach Company, to raise the rate from 10 to 15 cents within a certain area or areas in Arlington County.

Q. It was an application by your company and these other companies to raise the rate?

A. That is correct.

Q. Yes, and that——

Mr. DUNLOP. Was that an I. C. C. application or Virginia?

The WITNESS. It was an I. C. C. application.

By Capt. DAVIS:

Q. And what disposition was made of that case?

A. The Interstate Commerce Commission said that the railroad company was entitled to raise its rates because it was going broke, but they did not believe it would be advisable for the railroad to do it, because of the bus application, but that they found no facts justifying the raise for the bus companies.

Q. Was the application withdrawn by the bus companies or merely denied, or what was the fact?

840 A. The application for increase was denied and the railroad companies subsequently went broke.

Q. Mr. Lane, do you know what your average bus-mile cost is?

A. No; offhand, I cannot give it to you. I can have it for you.

Q. Could you supply that with this other information?

A. Yes, sir.

Q. Have you made any allocation of cost and revenue for services to these installations in comparison with that of other lines?

A. It would be absolutely impossible for this company to make any allocation of cost and expenses with relation to the two installations involved in this hearing that we serve, for the simple reason that probably 90-odd percent of the equipment used by this company serves one or both of those buildings on every trip they make.

Q. In other words, the operations to these points are so inextricably interwoven with your other operations?

A. Yes; and on every bus that touches either the Navy or Pentagon Buildings we carry passengers to other points on every trip in both directions.

Q. Is there substantially equivalent counterflow traffic going to and from these installations?

A. I don't know how you can have counterflow traffic going to and from.

841 Q. Well, in other words, is it fair to say that the same busses which take people out to the Pentagon Building in the morning are routed so as to bring them back, who live in Arlington County and work in the District and travel into the District in the morning, do the same busses taken them out of the District to Arlington and take people home from the Pentagon and the District?

A. Yes; and that business, I might explain, is not the only counterflow movement on the line.

Q. Do you want to elaborate on your answers, briefly?

A. No; I merely mention that the volume to the Pentagon and Navy installations is probably larger than the other counterflow business we have, but is not the exclusive counterflow of business, by any manner of means.

Mr. WHITTLESEY. Mr. Lane, in what way are you using the term "counterflow"?

The WITNESS. In accordance with Captain Davis' idea of what counterflow is.

Mr. HILL. And what is that?

The WITNESS. Apparently he thinks anything that is in the reverse direction from Washington in the morning and from Virginia in the evening.

Mr. QUIRK. The Captain has kept that from me up to this time.

Mr. HILL. Yes.

842 Capt. DAVIS. I am asking for Mr. Lane to explain that.

By Col. BARRON:

Q. About how many busses do you operate on your line?

A. We operate 54 busses; 48 at the present moment.

Q. Have you made any count as to determining how much of your traffic is directly attributable to these installations involved here?

A. Well, roughly, the traffic to the two installations that we serve is approximately 30 percent of our volume by passengers; probably 25 percent from revenue.

Q. How do you arrive at that, have you made any study?

A. Yes; we have taken the forms that have been made both by the War Department, the counts that have been made by the War Department and the counts of Capital Transit Company and by ourselves.

Q. What is the total mileage of your system?

A. The total mileage is some, including overlapping routes, approximately 40-odd miles.

Commr. PATTERSON. That is, route miles?

The WITNESS. Yes, sir.

Commr. PATTERSON. What would that amount to in road miles?

The WITNESS. We do 125,000 miles a month, approximately.

By Col. BARRON:

Q. You do not file an annual report to your stockholders?

843 A. Similar to the Capital Transit report?

Q. Yes.

A. No, sir.

Commr. PATTERSON. Any further questions?

Exam. MATTINGLY. Do you have any intrastate rates in D. C.?

The WITNESS. Yes, sir. We do.

Exam. MATTINGLY. Well, will you tell us about those?

The WITNESS. We have intrastate rights within the District of Columbia from the south end of Highway Bridge up as far as the entrance to the Golf Course on 13th Street, and have carried intrastate passengers to and from those points for as long as the company has been in operation.

We used to have intrastate rights up as far as the Bureau of Engraving and Printing, but some few years ago the Public Utilities Commission of the District ordered us to cease and desist from all points beyond the entrance to the Golf Course, which, is, well, for location, without further discussion, just on the near side of the Jefferson Memorial Driveway.

Exam. MATTINGLY. How about the passengers going from the District into Virginia, bus operating in that direction?

The WITNESS. We carry people to and from those points, namely, we have three District stops authorized by the *the* Public Utilities Commission within the District of Columbia,
844 that is the entrance to the Golf Course, the tourist camp, and the north end of the Highway Bridge and the south end of the Highway Bridge, all of which, I believe, are in the District.

Exam. MATTINGLY. You can take them on or let them off your Virginia busses at any of those points, or somewhere between any of those points?

The WITNESS. Yes, sir; and from any other point on our line within the District.

By Capt. DAVIS:

Q. One further question, Mr. Lane, referring to the question of making allocations as between this line and the other line, are you familiar with the petition which the War and Navy Department filed on August 28th requesting the respondents to produce certain evidence including allocations; that is, the petition which we discussed in conference with Commissioner Patterson?

A. The petition discussed in that conference?

Q. Yes.

A. Yes. I do not recall the details of it now; no. I have seen it and gone over it carefully.

Q. It is the position of your company that it is impractical to make any allocation or produce any information of the character requested in this petition?

A. No; there are certain things in the petition which we agreed we could furnish. There are certain suggested computa-
845 tions requested in that petition which we could make if given sufficient time and given the amount of money necessary and could obtain the manpower to do it.

And as to the accuracy of those computations, I would not be able to state at this time.

Q. Is it a fair statement of your feeling and opinion that it is impractical to furnish the breakdown or allocations with reference to these particular operations without the expenditure of an unreasonable amount of money and time?

A. I think it would be impractical from the point of view of this hearing for us to attempt any detailed allocation of capital expenses to the two installations we serve in the short time available, yes.

Capt. DAVIS. That is all.

Cross-examination by Mr. HILL:

Q. Mr. Lane, what is the fare within the District over your lines where you have intrastate rights?

A. Ten cents, fixed by the Public Utilities Commission of Washington, D. C.

Q. Now have you estimated how long it would take you to produce all of the information requested by Colonel Barron in his petition to the Commission?

A. I have had an estimate made by our staff and by a certified public accountant who works for us, and it is estimated that it would take at least six months.

846 Q. And what do you estimate would be the cost of making the necessary appraisal in respect to that in supplying the information?

A. The cost to the company to do the job properly would cost a minimum of $7,500 or $10,000.

Q. Now, Mr. Lane, I think it was Mr. Heberle who said this morning or early this afternoon, spoke of a change in his wage rate which may become retroactive to July 1, 1943, if approved by the W. M. C.—did I get the right combination of letters of the alphabet, I get mixed up in all those alphabets.

Mr. DUNLOP. War Labor Board.

By Mr. HILL:

Q. War Labor Board. What is the situation of your company with respect to the possibility of increased wages?

A. Well, our contract does not expire until December 1st, 1943, but in view of the fact that all of the competing companies have authorized increases of varying amounts, there is no question but what our wage rate will go up if the War Labor Board allows any increases.

Q. Now, in the last few months, Mr. Lane, have we been in the midst of a cycle of rising prices?

A. Very definitely for the last twelve or eighteen months.

Q. Now, in what categories do that fall, has gasoline gone up?

A. Gasoline has gone up slightly, but not materially.

847 Of course, parts have gone up, labor has risen, equipment costs have gone up at all times, and generally, I think it is fair to assume that the cost of practically everything in connection with the operation are higher today than they were in any part of 1941 or 1942.

Q. When the gasoline restrictions were first imposed, Mr. Lane, did it have any appreciable effect upon the amount of your traffic to and from the Navy Building?

A. Very definitely, when gasoline was withdrawn from the general public use in May of 1942, our traffic started to mount by leaps and bounds.

Q. Now——

A. In June and July of 1942, and without referring to the figures, I am afraid to estimate, were at least 50 to 60 percent greater than April, than March and April of the same year.

Q. Now, as an experienced operator, what would you anticipate if those restrictions should be removed?

A. I do not believe there is any question but we would lose some 40 per cent approximately of our traffic.

Q. By the way, are you familiar with the physical lay-out around the Pentagon and the Navy Annex?

A. Only generally.

Q. What parking facilities are there over there?

A. There are two large parking areas at the Pentagon
848 Building and what parking facilities are available at the Navy Annex, I do not know.

Q. And there has been a very strongly pushed campaign for sharing of rights, has there not?

A. Very definitely.

Mr. HILL. Mr. Commissioner, I have not understood Mr. Lane would be on the stand today.

I would like to reserve the right to ask him further questions which I believe are necessary.

Commr. PATTERSON. That is agreeable.

Mr. QUIRK. May I ask one question?

Commr. PATTERSON. You may proceed, Mr. Quirk.

By Mr. QUIRK:

Q. Mr. Lane, when would you say the peak of this traffic between the District of Columbia and the Pentagon Building and the Army or the Navy Annex—that is what you serve, isn't it?

A. Yes, sir.

Q. (Continuing). Was reached?

A. Some time last spring.

Q. May?

A. No, I believe it was before that, it was probably in February or March.

Q. Now, what has the trend of your traffic between the points named been since that time?

A. It is gradually decreasing all of the time.
849 Mr. QUIRK. That is all.

By Mr. WHITTLESEY:

Q. Mr. Lane, if a person who is employed by the Navy Department and by the Army-War Department resided in Virginia and

traveled to the place of employment, what would the fare be over your line?

A. Well, it would depend upon what part of Virginia they resided in.

Q. What would be the maximum fare, then, that they would have to pay?

A. The maximum fare would be 10 cents over our line.

Q. So that fares over your lines to these installations, whether from Virginia or the District of Columbia, would depend upon the residence of the employees, would it not? I will withdraw that question.

Col. BARRON. Depend upon the zone in which they lived.

By Mr. WHITTLESEY:

Q. The maximum fare that a person would have to pay to travel on your line to the Pentagon Building would be no greater in the District of Columbia than it would be if that person resided in Virginia?

A. That is correct.

Mr. WHITTLESEY. That is all.

The WITNESS. I might add one clarification of that, due to a peculiar tariff situation, there is a point in Green Valley, which is the end of Glebe Road inter-section—intersection of Glebe
850 Road and Army and Navy Drive, in that vicinity, where a person traveling to the Pentagon Building must be required to pay 15 cents.

That is a peculiarity of a tariff mix up, and under the tariff schedule there would be, I believe, 15 cents, because the Pentagon Building would be within the same zone as the District of Columbia, which is 12th and Pennsylvania Avenue.

Mr. WHITTLESEY. Well, if some person chose to reside outside of the 10-cent zone, at Four Corners, Maryland, he would pay 10 cents and 8⅓ bus fare, which would make 28.3 to ride to the Pentagon Building; isn't that correct?

The WITNESS. But you said what is the maximum fare on my line and I was trying to take that one situation, and the maximum on our line would be 10 cents.

Mr. WHITTLESEY. That is all.

Commr. PATTERSON. You are excused.

(Witness excused.)

Commr. PATTERSON. We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:50 o'clock p. m., the hearing was adjourned to Saturday, September 11, 1943, at 9:30 o'clock a. m.)

851 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B",
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Saturday, September 11, 1943.

Hearing in the above-entitled matter was resumed at 9:30 o'clock a. m., pursuant to adjournment.

Before WILLIAM J. PATTERSON, Commissioner; G. H. MATTINGLY, Examiner.

Appearances same as heretofore noted.

852 PROCEEDINGS

Commr. PATTERSON. Are you ready to proceed, gentlemen?

Col. BARRON. I think we had finished with Mr. Lane.

Mr. HILL. I am ready to go ahead with Mr. Lane. I do not know what you planned.

Col. BARRON. No, go right ahead.

FRANKLIN K. LANE was recalled as a witness and having been previously duly sworn, testified further as follows:

Direct examination by Mr. HILL:

Q. Mr. Lane, you indicated yesterday that you had prepared a map of the three Virginia lines and I believe also of the Capital Transit Company to the Pentagon.

Do you have copies of that available now?

A. I have.

The WITNESS. Will you please distribute those?

(Copies of map distributed.)

Mr. HILL. How may this be identified?

Exam. MATTINGLY. 91.

(Respondents' Exhibit 91, Witness Lane, marked for identification.

Mr. HILL. Mr. Commissioner, if there is no objection, may I offer this in evidence at this time?

Commr. PATTERSON. No objection; it will be received and identified as Exhibit No. 91.

853 (Respondent's Exhibit 91, Witness Lane, received in evidence.)

By Mr. HILL:

Q. Mr. Lane, are there any comments you feel are necessary on this map?

A. The map indicates the route of the three Virginia companies in Arlington County and Alexandria, Virginia, each company's operations being shown by a different symbol. It also shows the two Capital Transit routes from 19th and C and 7th and Constitution Avenue to the Pentagon Building.

Colonel Barron asked me yesterday to supply him with the cost per mile figure of our operation.

I have that figure at this time if it is wanted. Our direct cost of operation is 28.37 cents per mile.

Col. BARRON. Will you break that down into the components that add up to that figure?

The WITNESS. I have not the break-down of that before me. The only break-down I have is that the direct operating are 2.784 cents, and that includes—interest on long-term obligations is .0053 cents. As to the individual break-down between the various items, well; I would prefer to submit an exhibit if that is what you want done.

Mr. DUNLOP. Mr. Lane, when you say "direct cost," I assume that something is excluded. What is it?

The WITNESS. Perhaps I was wrong in saying direct cost. I meant operating expenses. I think direct cost was a misnomer.

854 Col. BARRON. What period are these figures made up to cover?

The WITNESS. For the first six months of 1943.

By Mr. HILL:

Q. Mr. Lane, you spoke yesterday of the heavy expense in producing the information requested by Colonel Barron in his petition to the Commission.

Would you have any objection to producing your books and records for photostating either by the Commission or by the Army in order that they might make up figures that they believe pertinent and relevant?

A. None at all. I so suggested at the conference held a week ago today.

Exam. MATTINGLY. Just along that line, I understand that if your books were searched from end to end you still would not have a basis for securing the information that is involved here, and segregating that information from the rest of your business; is that correct?

The WITNESS. That is correct, sir.

We keep our books in accordance with the I. C. C. formula, and I do not believe it is possible to break them down into what is desirable by Colonel Barron without assuming a number of hypotheses none of which could be accurately computed, and therefore the figures you would derive would be purely hypothetical and I do not believe of any material value.

By Mr. HILL:

Q. Mr. Lane, in other words, you are perfectly willing for them to take your books and try to do it if they can?

855

A. That is correct.

Q. And satisfy themselves that it cannot be done. In other words, if we are wrong we are wrong, but have them say, Mr. Lane, just for record purposes.

You spoke of a conference of a week ago today; that was a conference held in the absence of Commissioner Patterson?

A. That is correct.

Q. When did you become associated with Arlington and Fairfax, Mr. Lane?

A. I became associated with the Arlington and Fairfax in 1935.

Q. By the way, when did you first draw a salary?

A. 1940 or 1941.

Q. When did you become president of the company?

A. 1938 or 1939, I think.

Q. Now Mr. Lane, will you touch briefly on the history of the Arlington and Fairfax, describe its predecessor company, and the developments since.

A. Well, the original predecessor of the Arlington and Fairfax Motor Transportation Company was the original Electric Line which was incorporated in 1894, to serve that part of Virginia. It was incorporated by Act of Congress in 1894, I

856 believe.

In 1932, that company, the Electric Line, was deprived of its terminal in Washington. It had originally operated to a terminal at approximately 12th and Pennsylvania Avenue. It was thrown out of that by governmental action and it became necessary for the railway company to provide some means of transportation in a different way for its patrons which were drawn from a large portion of Virginia, as far back as Fairfax.

In 1928, the Arlington and Fairfax Motor Transportation Company was incorporated to supply that entrance in and out of Washington, with the railroad, which had originally operated from Clarendon to Washington over Old Washington Boulevard.

Subsequently, it was extended from Clarendon to Falls Church, that latter segment of the line having been sold in 1939, I believe.

When the railway company was abandoned in 1939, it became clearly evident that a large segment of Arlington County would be without transportation, so it fell upon the bus company, the motor transportation company, to supply that transportation.

In the latter part of 1939, the Arlington and Fairfax Motor Transportation Company undertook to duplicate as nearly as possible all of the line which the railway company had heretofore served.

I think that is all.

857 Q. Now, when was it that the Electric Railway Company went bankrupt?

A. The Electric Railway went out of existence in 1937, if I am not mistaken, and was supplemented by the Auto Railroad, which operated auto railways over the old electric line property.

That company went out of existence by abandonment due to financial difficulties in 1939 after an operation of approximately two years.

Q. While the railways were in existence, did they maintain commutation fares to serve the public?

A. The Railway Company and the Auto Railway had maintained commutation tickets for a great many years and had a slightly lower rate than the prevailing bus rate, and it was due to that rate that it probably went broke.

Q. By the way, you said you drew no salary until in the early '40s. Why was that?

A. The bus company just couldn't afford to pay them, we were struggling to build up an operation over territory which was a little difficult to build up in volume, and my recollection is that no general officer outside of possibly the general superintendent drew a salary from 1932 until 1940 or 1941.

Q. Mr. Merrill was on the stand on Wednesday of this week, Mr. Lane, he mentioned conferences prior to the location of the Pentagon Building, bearing on the possible location

858 of the building.

Did you attend any of these conferences?

A. Yes; I attended several of those conferences prior to any construction work being started on the Pentagon Building; in fact, even prior to the selection of a site for the Pentagon Building.

One of those conferences was held in the Interior Department in 1940 sometime, I believe, which was attended by representatives of the War Department, the Park and Planning Commission, the Capital Transit, the Public Utilities Commission of Washington,

the director of Highways of Washington, representatives of the Capital Transit Company, the A. B. and W., and ourselves.

At that time, they were contemplating building the Pentagon on Memorial Drive somewhere between Memorial Bridge and the Memorial Gate of Arlington Cemetery.

It is my recollection that all of the transit companies opposed the building of the Pentagon Building on the Virginia side of the river; certainly, if they did not all oppose it, I opposed it.

My recollection is that all of them opposed it.

Q. Mr. Merrill so testified, did he not, that he opposed it?

A. That is correct, I believe, and subsequently followed up his opinion by a letter in which—about which I discussed with him prior to his writing it.

859 All of the transit companies, I believe, if I remember correctly, told the War Department at that time that the transportation cost and difficulties would be large and they did not believe under normal circumstances that adequate transportation could be supplied and installation anything like the size of the Pentagon Building on the Virginia side of the river, due to the distances of haul involved from the center of Washington, and also due to the limited number of bridges over which the traffic in both directions would have to flow during the rush hour period.

Q. Now, during those conferences, did the subject of fare levels come up for discussion?

A. Yes, the subject of fares came up at practically every conference, in which we were asked individually to state to the War Department what the fare on all respective lines would be to and from certain proposed locations of the Pentagon Building.

Q. And were all the conferees fully apprised of the fare level?

A. At all times.

Q. Was any question then raised that the level was too high?

A. No suggestion was made that it was too high. The chief objection, or rather, the chief objective of the War Department at all times was to increase the service available, irrespective of cost.

860 Capt. DAVIS. If Your Honor please, we might point out that any discussion at that time of what the fares might be or what anyone thought they might be is totally irrelevant to the proceeding now as to what the fare should be at this time.

Commr. PATTERSON. Yes, but it is interesting.

Capt. DAVIS. We have no objection to the material being put in, but we just want to point out that it is totally irrelevant.

Mr. HILL. That very subject was brought up by Mr. Merrill on the stand, who, I believe, was put there by the War Department. We are trying to enlarge on the subject.

Commr. PATTERSON. You may proceed.

Capt. DAVIS. I might say we didn't put him on for that. That, I believe, was brought up by someone else.

Mr. HILL. General Lewis, I believe it was, brought the subject up.

Commr. PATTERSON. Proceed. We don't want the record filled up with this sort of thing.

By Mr. HILL:

Q. Mr. Lane, did the Office of Defense Transportation make an appearance with respect to the services between the District of Columbia and the Pentagon and other installations in Virginia?

A. In the early part, or the middle of 1942, the Office of Defense Transportation created a local group called The Office of Defense Transportation Administrators, I believe.

861 In August of 1942, they started, this Administrative, started consulting with the companies regarding the service to and from the Government installations in Virginia.

Q. Now, they set up the Regional Committee, did they not?

A. That is correct.

Q. And who were the members of that Committee?

A. Mr. Diehl, Mr. VanDuzer, and a gentleman from Maryland whose name I do not recall.

Mr. DUNLOP. Wilkinson.

The WITNESS. Wilkinson from Maryland, were the three members of the committee, and a Mr. Lovejoy was executive secretary.

Mr. DUNLOP. Mr. VanDuzer is Highway Director in the District of Columbia, isn't he?

The WITNESS. That is correct, Mr. Dunlop.

Mr. DUNLOP. Director of Vehicles and Traffic.

The WITNESS. Vehicles and Traffic. Mr. Diehl is assistant to Mr. Richardson, I believe, of the Office of Defense Transportation, and Mr. Lovejoy is a member of the Bureau of Public Roads, if I am not mistaken.

Mr. Wilkinson's other connections I do not know.

By Mr. HILL:

Q. Now, did the matter of fares between the District terminals of the Virginia companies to the Government installations west of the river come up for discussion?

A. The matter of fares came up in August 1942, and was
862 discussed by that group and the carriers extensively.

Q. Incidentally, Mr. Lane, at least periodically the companies were invited to be present at meetings of the Regional Committee, were they not?

A. Not at all meetings of the Regional Committee, but certain specific Regional Committee meetings which were conducted for the purpose of the discussions of fares or routing or other, rubber problems, and so forth.

Q. And through the months there were a considerable number of such meetings attended by the carriers, were there not?

A. Oh, I presume we had a minimum of one meeting a week from the first of September 1942, until the 15th of April 1943, and I think I am conservative, I say, one meeting a week.

Q. And the representatives of the carriers were supplied with copies of the minutes of those meetings, were they not?

A. That is correct.

Q. Now, will you proceed to tell us about the discussion of fares which went on through the month?

A. The Regional Committee brought to the company's attention the discrepancy in fares between the various points in the District of Columbia and the Pentagon and the Navy Annex Buildings, and stated to us that the War and Navy Departments were exerting pressure upon them for a change in the fare structure, and we started in discussing fares, as I say, in the latter part of
863 October 1942, if my memory is correct, and in the latter part of September 1942, the Regional Committee demanded of the companies that we institute a 15-cent joint ticket for a one-way trip in conjunction with the Capital Transit Company.

Q. For use from all points in the District of Columbia?

A. For use from all points in the District of Columbia to any of the three installations then involved, to wit, the Army Air Forces Building, the Pentagon Building, and the Navy Annex Building.

Q. And also in the reverse direction?

A. And also in the reverse direction. The companies acceded to that request of the Committee after considerable discussion and debate among themselves, but at the time they acceded to it, the Regional group had come to the conclusion that 15 cents was not an appropriate fare and they stated to us that they did not feel that that was the fare they wished to institute and that the Army and Navy would not be satisfied with it, and therefore, they requested us to institute a dock fare of 14⅛th, I believe, one-way fare, which the companies debated again for a day or two, and they made a subsquent proposal that there be joint ticket issued at approximately 14.60 for one-way trip.

By the time that suggestion was made to the Regional Committee, the Regional Committee again had changed its mind and made a demand of us that a 13⅓ cent joint fare be put into effect.
That latter proposal was made somewhere along in the
864 spring of 1943, if I remember correctly, although it may have been introduced as a proposed fare at an earlier date

Q. And as these discussions went along, Mr. Lane, was there any suggestion that the local fares of the Virgina companies between the District and the Pentagon as represented, should be reduced?

A. Never at any time was it proposed that any one of the local fares from the casual rider should be changed from the prevailing rate.

The entire assumption on the part of everybody was—with whom I talked, whether they were Regional Committee or at the War or Navy Department—that any reduction would be purely and simply for the volume of traffic created by the emergency and during the gasoline restrictions.

Q. And was it to be in the form of a 12-ticket book?

A. Well, the 13.3 fare proposal was discussed at length and the Regional Committee proposed that certain other authorizations in the fare structure be put into effect at the same time that the 13⅓-cent fare was put into effect, and in February of 1943, they put their plan in concrete form in their minutes, and the companies accepted the plan under a letter, which I believe Mr. Merrill introduced in the record, dated March 9, 1943.

That fare was to be in a 12-round-trip book selling for $1.60 per book.

865 Col. BARRON. May I ask a question, just for clarification?

Mr. HILL. Yes.

Col. BARRON. How did the O. D. T. happen to get into this picture? I am not familiar with all the background.

The WITNESS. The O. D. T. got into this picture originally by its conservation order, statement of policy issued, I believe, in April 1942, which demanded of all motor carriers conservation of equipment, rubber, gasoline, and so forth.

The Regional groups were set up pursuant to that order to enforce and suggest means of conservation of rubber and equipment.

Mr. HILL. Before you proceed with that, may I correct one thing?

I believe you spoke of 12 round trips. I believe you mentioned six round trips when you were answering me, did you not?

The WITNESS. No; it is 12 two-part tickets.

By Mr. HILL:

Q. Yes, it is really six round trips?

A. Six round trips, I beg your pardon, that is correct; one week's supply of tickets.

Col. BARRON. What is puzzling me is that I do not understand why the O. D. T. would be concerned with the rate, that was my question.

The WITNESS. Well, the O. D. T., I believe, was concerned with the rates from two points of view.

866 One, to use the equipment available to its maximum capacity in all directions; and

Two, to satisfy the War and Navy Departments in effecting some sort of a reduced rate for the employees in those departments, and to make the rate as uniform as possible from all points via all routes to the Government installations.

By Mr. HILL:

Q. Now, Mr. Lane, when did the Burton Subcommittee of the Senate Committee on Interstate Commerce first enter into the picture?

A. The subcommittee of the District Committee of the Senate held hearings, two of them, in the winter of 1942–43, and I do not know the exact month.

Mr. WHITTLESEY. Was it October?

The WITNESS. It may have been October or November, the first two hearings.

Subsequently, after those hearings, at a conference in Senator Burton's office, Senator Burton was the chairman of the subcommittee, I might add, it was suggested by Senator Burton and concurred in by the balance of his committee subsequently, that some independent authority be asked to go into this entire picture and make recommendations for the guidance of all concerned.

Senator Burton, if I am correct, requested that the I. C. C. or requested of the I. C. C. the assignment of someone to act in this capacity.

867 The Interstate Commerce Commission assigned Mr. Blanning to act. Mr. Blanning, I believe, submitted a report, in fact, I know submitted a report to the Regional Committee.

By Mr. HILL:

Q. Now, that report, I believe, forms an exhibit, is an exhibit in this record and need not be explained.

The carriers, however, acquiesced in Mr. Blanning's suggestions, did they not?

A. Mr. Blanning's suggestion was incorporated in the minutes of the Regional Administrators in February of 1943, and subsequently concurred in by all of the carriers in the early part of March 1943.

Q. Is there anything else you care to say on the subject of the Regional Committee?

A. I do not think so.

Q. Before the Office of Defense Transportation interested itself in this subject, where was your Washington terminal?

A. Our Washington terminal was at 10th and E Streets.

Q. Is that a desirable location?

A. That was what we thought the most desirable location this side of F Street.

At the instance of the O. D. T., we were forced to move the terminal to its present location which is midway between Pennsylvania Avenue and Constitution Avenue on 12th Street, in the interest of saving and conserving mileage in the operation.

868 Q. Is your present location as desirable as your previous one?

A. Unquestionably, the present location has cost us a considerable volume of both peak and off-peak travel, particularly off-peak travel. It is not as desirable.

Several months ago, I filed an application with the Public Utilities of Washington to go back to our old terminal, and the Office of Defense Transportation, who was consulted by demand of the Public Utilities Commission, refused to acquiesce in our going back because of the difference in mileage, which amounts to approximately, probably five blocks for one-way trip.

Q. Briefly, Mr. Lane, why is your present location undesirable?

A. It is undesirable from several points of view. It is impossible to advertise properly. The busses themselves are not viewed by the mass of the traveling public, it is served by a larger operation, to wit, the A. B. and W. operation, on the corner of 12th and Pennsylvania Avenue, and further than that, it does not take people to and from the shopping, theatre, and business area of Washington, which is centered around 10th, 11th, and F Streets.

Q. What is the present trend of your maintenance cost, Mr. Lane?

A. The present trend is upward; decidedly.

Q. And the results in depreciation charges to cover mechanical and physical depreciations are what?

869 A. Well, I think like all carriers who are involved in this emergency travel, the depreciation, in my estimation, does not adequately cover the physical abuse of the vehicles.

All of our vehicles are carrying in peak periods excess loads. We are unquestionably taking more and more miles of life out of the vehicles than we are traveling miles over the road.

Likewise, we have a terrific amount of maintenance that should be done to our vehicles which manpower limitations prevents us from doing and which our inability to get critical materials and parts prevents us from doing.

Q. Can you give us a concrete instance of that?

A. Well, in some instances, we are using crank shafts in our vehicles which should not be used by building them up with material, spares, rather than putting in new crank shafts. New

crank shafts are not available and the crank shafts in operation are so much undersized as to require their being built up for any type of operation.

Commr. PATTERSON. The only thing the building up does is prevent them from rattling, isn't it?

The WITNESS. Well, it unquestionably shortens the life of our motor for a long period of time, because it never is a proper fit.

By Mr. HILL:

Q. You spoke yesterday, of having recently disposed of six busses.

870 A. In the fall of 1941, we got three yellow coach busses; in the spring of 1944 we expect delivery of three yellow coach busses. Those busses were put in service by us as soon as delivered. The excess loads of those busses were so great, the terrain over which they travel was so hilly and so rough during the first part of their service that it was almost impossible for us to keep those busses in operation.

The busses required overhaul on an average of some twelve or fifteen thousand miles a bus, and for the last six months we were fortunate to keep two out of six in operation at all times.

We poured some $3,000 in maintenance into those six busses the first six months of this year, and came to the conclusion that we just couldn't keep them in operation, so we transferred them and have applied for other vehicles to take their place.

But that merely goes to show the added strain that the traffic has caused on the equipment, which cannot be compensated for by proper maintenance or normal depreciation.

Mr. WHITTLESEY. Pardon me, Mr. Lane. Were those the busses that had to travel over the roads down there that were being constructed by the War Department when the Pentagon Building was being built?

The WITNESS. Some of them unquestionably did; yes.

By Mr. HILL:

Q. Mr. Lane, there has been some mention of the 5-cent
871 fare from the Memorial Bridge to the Navy Building; why was that fare put in?

A. That fare was put in at the instance and request of the Navy. I can't give you the date of its inception, but it was just prior to the completion of the Naval Annex Building.

Lt. Beard, who was that time in charge of naval transportation in this area, conferred with me on numerous occasions, and prevailed upon us to put in that particular service for the benefit of the Navy Annex.

Q. That was to connect up with the Capital Transit Company?

A. That was to connect up with Capital Transit without going down to that part of town.

Q. Now, Mr. Lane, Mr. Trueblood commented on the stand on the advisability of putting in a pass for joint use between Capital Transit and the Virginia lines.

What have you to say about the feasibility or practicability of that?

A. Well, I think it is impractical for a number of reasons. We have explored at great length the possible, all of the possible combinations of tickets, tokens, passes, and cash fares, in conjunction with other companies, at one time or another. There is no practical method by which a pass could be used by two connecting companies without one of the carriers being, intentionally or unintentionally, cheated out of its fair proportion of the split, irrespective of what that split might be.

872 Both companies would be in the hands of the drivers of vehicles, and an inaccurate count on the part of one or the other would result in an unfair division of the proceeds of any such a pass.

Further than that, it would be impossible to limit a pass to going to and from these particular installations. There would be no way that the driver of the vehicle could tell in the District of Columbia, for instance, whether the person was merely going downtown to shop or going to the Pentagon Building or to the Navy Building or to any place else.

Therefore, any pass that was issued by the Capital Transit Company would unquestionably have to be an all-purpose pass and the division of the revenue from that pass versus the number of rides that that pass was used for on Capital Transit or on our lines, as the case may be, would be impossible to compute.

Q. Do you agree with Mr. Trueblood that you could do it by a sampling process, once a month, taking a traffic count and pay on that basis?

A. I don't think that that would be practical to any degree at all. I think that that would be no better, serve no better purpose than just an arbitrary proportion, arbitrary division of the proceeds.

Q. Now, Mr. Trueblood also testified that transfers were extremely undesirable. Do you agree with him on that, Mr. Lane?

873 A. Transfers are very undesirable from the transportation point of view, and particularly transfers that have any monetary value. The moment a transfer becomes valuable, why, it puts the company either issuing or receiving that transfer in the hands of the public and their drivers. There is a traffic in transfers, I think, in probably every transit company in the world, everybody

from children to women collect transfers and hand them back and forth and use them for all sorts of purposes that were not originally intended.

And the moment you put a value of one cent or ten cents on the transfer, you open up immediately that traffic to all the employees of the company who can put their hands on transfers to sell to the——.

Mr. WHITTLESEY. Sort of a black market?

THE WITNESS. Yes.

By Mr. HILL:

Q. Is there any way in which they can be successfully registered by any mechanism on the bus?

A. There is no way that we have thought of or any other company in this area that I know of of handling transfers except by the manual collection by the driver and the depositing of the transfer in a pocket of the driver or in a box particularly affixed therefor.

The result is that there is no way of cancelling them properly, and they are go'd until they are cancelled, until lifted.

Q. Now, directing your attention to the Rosslyn 5-cent
874 fare, what can you tell us about that?

A. Well, the Rosslyn line was originally instituted prior to any construction work in that area by the Government, and was a line which ran from Rosslyn to Green Valley via Arlington Ridge Road, and Army and Navy drive.

In April or May of 1942, it was broken up by request of the O. D. T. at the Navy Building.

The O. D. T. requested us to abandon the balance of the operation for the duration.

It is approximately a six-mile round trip, and it required about six times the number of vehicles during the rush hour period that can operate the line efficiently in the base period.

Q. Do you serve both the Pentagon and the Navy annex on each trip?

A. We serve both the Pentagon and the Navy Annex from Rosslyn on each trip.

Q. By the way, Mr. Lane, when you speak of the 5 cent fare from the Memorial Bridge to the Navy Building, was it at the same time at the instance of the Navy Department that the 7½ cent fare was put on by the A. B. and W.?

A. No, the Navy Department had no interest in the A. B. and W. 7½ cent fare. That was a fare which was put in to meet the demand of Major Finelehor and Colonel Larner, Mr. Taylor, and a Colonel Householder, who was then in charge of the transportation in this area.

875 Mr. DUNLOP. That was the Mr. Taylor who was on the stand here?

The WITNESS. That is Mr. Taylor, I believe, who was on the stand in this case; and it was instituted, I believe, at their immediate suggestion and request after a number of conferences with those gentlemen in order to arrive at what we might call, pacifying the War Department, for some reduction in the 10-cent fare.

Mr. DUNLOP. Did that succeed in pacifying them?

The WITNESS. Not for lon[redacted]

By Mr. HILL:

Q. Now, reverting to the Rosslyn fare, what did Mr. Blanning suggest for that?

A. Mr. Blanning suggested that that fare should be raised to a 10-cent cash fare or a 7½-cent ticket fare. The haul is entirely a one way haul, amounts to a six mile round trip, and obviously a 5-cent fare is not, will not compensate for the travel involved, considering the size of the equipment which this company operates.

Q. That is in one direction and is almost altogether a one way haul?

A. It is entirely a one way haul from the Rosslyn point to the Navy and Pentagon Buildings in the morning, and from the Navy and Pentagon Buildings to Rosslyn in the evening.

Q. Now, Mr. Lane, are you encountering any difficulty in obtaining busses?

876 A. Well, it is impossible to purchase busses without the permission of O. D. T. and subsequently W. P. B. All busses are allocated by O. D. T. to the carriers and they are allocated only if the character of the service warrants the purchase of new equipment. By that I mean that it is 90 percent war work. The equipment that we have received through O. D. T. and put in operation to serve the Navy and Pentagon Buildings is, I believe, 13 or 15 vehicles, all of which were financed by this company without any Government help whatsoever, and were purchased by this company to increase the service to and from those points at the instance and request of the two Departments.

Q. Now, on the question of buying back the busses. What would happen to you if the O. D. T. should decide that you were furnishing an unneeded service on this line anyway?

A. Well, the O. D. T. reserves in its contract the right to take that bus away from us at any time at a fixed value if, in their estimation, the bus is more needed anywhere else, and the price for the repurchase of that equipment is fixed in the contract which you sign with O. D. T. when you order new equipment, and the price is fixed by a monthly depreciation in the value of the bus, irrespective of the mileage or condition of the equipment.

Q. Approximately how many more busses do you need to furnish the rush hour service than are needed for the normal service?

A. We probably could use about five times the number of busses in rush hours that we do in the base period.

877 At the present time we are operating four times the number of busses in rush hour that we are during the base period.

And I might add there that at the present time we are carrying capacity loads in practically every piece of equipment at some point on our line, whereas, in the base period, due to the falling off of our non-peak traffic since the change of our terminal, we are able to give better than a seat per passenger in the off-peak periods.

Q. Between Highway Bridge all the way over to Hatfield Street that you mentioned yesterday, what is the nature of the terrain there? Is it a traffic producing territory?

A. Why, the roads over which we operate, there is no possibility of traffic being picked up and/or discharged except in a very limited, very short block between Highway Bridge and the intersection of Lee Boulevard and Washington Boulevard.

At the time the War Department started this construction in that area, they destroyed a large section of residences from which we drew quite a fair amount of traffic within that area. And today, between Hatfield and Washington, D. C., there is no possibility of any traffic originating except from the War and Navy Buildings.

Q. Mr. Lane, for record purposes, will you identify Hatfield Street on Exhibit 91?

A. Well, there is no Hatfield Street, Mr. Hill. The place
878 which we call Hatfield which is a holdover from the old railroad itself is the clover leaf shown on this map immediately above the "F" in the word "Fort Myer."

Q. What is your present fare from—between Hatfield and the Navy Annex?

A. Five cents fare.

Q. And what is your present fare between Hatfield and the Pentagon?

A. Five cents. I beg your pardon. Between Hatfield and the Pentagon, 10 cents. I am mistaken. I thought you said between Navy and the Pentagon. I wasn't listening.

Q. No.

Now, did the Navy Department at one time offer to run busses to you and the Arlington and Fairfax?

A. Yes, in the summer of 1942, we made arrangements to lease either four or five 45-passenger Diesel electric busses from the Navy. Those arrangements for that lease were made through a

Lieutenant Richard, who was then in charge of transportation in this area for the Navy.

The deal was never completed because the busses owned by the Navy were needed for emergency service in the Hawaiian Islands and so, rather than rent us the busses, the Navy Department, and I believe, Mr. Taylor, at the instance of the Navy Department, interceded with O. D. T. for the allocation to us of other equipment to take its place.

879 Q. Now, when the Navy Department agreed to rent you the busses, was there a complete understanding as to the level of your fares?

A. Absolutely. I discussed the question with Lieutenant Richard at great length and he wanted to know upon what route we would use the equipment if it was leased to us, and the rate of fare that would be charged throughout the entire territory served.

We went into it fairly thoroughly—I went into it with him and it was eminently satisfactory.

Q. Mr. Lane, I direct your attention to page 2 of Exhibit 87, for identification, showing the net income of the Arlington and Fairfax for the year 1942 as $21,812. After all taxes what figures do your books show?

A. That is not the figures shown by our books. Our books show a net after taxes of $13,664.67.

Q. Do your figures there show where the difference comes?

A. I do not know where the difference comes from unless it is in the computation of what is called on this exhibit "Before War Taxes," and "War Taxes." But there is a difference in the two nets as shown by our books versus the exhibit of approximately $8,000.

Q. Is there anything else that you care to contribute to the record?

A. Well, I might add that the building of the roadways,
880 as constructed to serve the Navy Annex and the Pentagon Building has added approximately one and seventy-five hundredths mile to each one-way trip that this company operates. It also has entailed an added running time to the schedule time of approximately ten to twelve mintes, per trip.

Prior to the construction of these roadways, our running time between the end of our line and our terminal in Washington was 28 minutes. Now, our schedule count is over 40 minutes, and we have less traffic congestion today than we had prior to the construction of those buildings.

This had, in turn, definitely affected the volume of traffic which is carried over our lines to and from the residential area in Virginia.

By adding to the time and mileage, people are inclined to use other means of transportation if it is quicker and less circuitous.

By Mr. QUIRK:

Q. Mr. Lane, you testified that Mr. Blanning had recommended after his investigation a 13⅓-cent joint interline fare between the Capital Transit and the Virginia companies, and that the companies in Virginia, including the Capital Transit finally acquiesced in that as a compromise measure.

I don't believe you have explained, and I wish you would explain just what were the constituent elements of that 13⅓-cent compromise. How was it made up?

881 A. The 13⅓ Blanning plan?

Q. No; the 13⅓-cent plan?

A. Well, the 13⅓-cent ticket represented 12 one-way rides, including a ride on the Capital Transit to and from any point in Washington.

Mr. HILL. Including the streetcars?

The WITNESS. Including the streetcars; over the entire Capital Transit Company system within the District of Columbia, and then a ride by any of the Virginia companies to any points that they may individually serve in these four installations in either direction.

By Mr. QUIRK:

Q. Was that 13⅓ interline ticket to be good for, if it had been put into effect, only to and from these Federal installations in Virginia, or was it good all over Virginia?

A. It was to be good only to and from these Federal installations.

Q. Well, it really represents the token fare in the District of 8⅓ cents plus the 5-cent fare that happens to exist between the same points on the Virginia lines and the District?

A. That is correct. It was put in so as to make it more convenient to the traveling public from all points.

In other words, in lieu of being required to go to Lincoln Memorial to get a 5-cent ride over our line to the Navy Annex, that person could take one of the busses at any point in the

882 District to which we operated and thereby perhaps make it far more convenient to the traveling public.

Q. Would there be a time limit on the use of such tickets?

A. The tickets were—no definite time limit was established except that we agreed that 60 days would be a suggested time limit on any such ticket, it being presumed that the 12 rides represented one week's transportation and 60 days was an adequate time in which to have it used.

By Mr. WHITTLESEY:

Q. Mr. Lane, in view of the time that you and other officials of the Transit Companies have spent conferring and negotiating with the Government officials regarding the Pentagon transportation problem, do you have any estimate of the proportion of overhead cost that should be included on the Pentagon Building?

A. Well, I might add from the point of view of the general officers it might all be attributed for the last six or eight months.

Q. Now, you feel that certain suggestions of the O. D. T. had been made, you have followed certain of those suggestions by O.D.T., have you not, particularly regarding removal of pressure, didn't you so testify?

A. Well, yes.

Q. Now, also—you also needed busses to serve Pentagon as well as the rest of your lines, did you not?

A. Very definitely.

883 Q. So that, is there any connection between the complaints or the suggestions of O. D. T. and the fact that you did receive more busses?

A. I do not know that I can answer that question directly.

Q. Oh; all right.

Do you think—I have one more question—do you have any comment, at the present time, as president of the transit company, do you have any comment as to the type of construction used in the highways, or I should say, the scheme of construction used in the highways in and around the Pentagon Building, insofar as transit problems, cost, and so forth, is concerned?

A. Yes; I very definitely feel that the highway construction at the Pentagon Building and thereabouts was made on an artistic basis rather than a practical one.

It has unquestionably added to our mileage on every trip, as I have testified, the routes we now have to travel are one and three-quarter miles longer per trip than we could travel by direct route, and a number of 360-degree circles which a bus has to make getting in and out of this building has unquestionably contributed to the difficulty of operation, and it has, on equipment and tires particularly, in bad weather.

By Mr. HILL:

Q. Were they laid out by the Army Camouflage Division?

Mr. Lane, let me ask you one question before cross-examination goes on.

884 If your fares from the District to Government installations on the Virginia side should substantially be reduced, do you believe that the reduction could be made on no other or would it spread to your Virginia fares?

A. Oh, there is no question but what a reduction in fares, if made from the District to these points in Virginia, we are going to have a demand from the Virginia people for an equal reduction.

We have already had that suggestion given to us by the various authorities of Arlington County, it being their premise that if a reduction in rate is made to the Pentagon and Navy Annex for residents of the District of Columbia, it would unquestionably be discriminatory as against the residents of Virginia going to the same place or coming into the District.

Mr. HILL. Mr. Commissioner, I have an important phone call I agreed to make at 10:30.

Could we have a short recess?

Commr. PATTERSON. Ten minutes.

Mr. HILL. Thank you.

(A short recess was taken.)

Commr. PATTERSON. You may proceed, Mr. Hill.

Mr. HILL. Mr. Commissioner, I do not know, there have been several questions asked, I tender the witness for cross-examination if that is the next appropriate step.

Commr. PATTERSON. Cross-examine.

885 CROSS-EXAMINATION

Capt. DAVIS. I would like to clear up first, if Your Honor please, this alleged difference between the exhibits and the annual report.

By Capt. DAVIS:

Q. Mr. Lane, in computing your net income as to which you said there was an $8,000 difference, did you deduct your interest on long-term obligations?

A. Did I deduct it?

Q. Yes.

A. Yes.

Q. So that if you were computing your net income for rate-making purposes, in other words, you would have to add back in the interest on that debt, would you not?

A. That is not my understanding; no.

Capt. DAVIS. Well, I assume the Commission can judge of the proper practice in that case.

By Mr. LANE:

Q. Now, did you also include as an expense in figuring your net income as you have done there, all of the taxes you paid, including all excess-profits taxes?

A. That is correct.

Q. And did that include an amount of approximately $4,300 excess-profits taxes, tax credit, which, under the tax laws you will receive back after the war?

A. You may be correct in that. Yes; I think it probably did; it doesn't show.

886 Q. Does the sum of that tax credit and the interest add up to the amount of $8,000 approximately?

A. Well, that is a mathematical computation. If that is it, it does; yes, sir.

Q. Now, Mr. Lane, you referred in your testimony to this so-called Regional Committee of the Office of Defense Transportation.

Do you know, as a matter of fact, whether the War Department was represented at these various meetings that they held?

A. They were represented at some of the meetings though not at all the meetings we attended.

Q. Did they ever give any approval to this 13½-cent fare or any similar fare?

A. That is something I would have no way of knowing about.

Q. They did not at any of the meetings at which you were represented?

A. Not at any of the meetings at which I was present.

Q. Did this proposal made by the Regional Transportation Committee after the Blanning report involve the raising of certain fares?

A. It involved the raising, I believe, of only one fare, to wit: the fare between Rosslyn and the Military installations. It eliminated certain other fares.

Q. Would it involve the elimination of the Capital Transit Company's five-cent fare?

887 A. No; it would have eliminated the—I correct that—it would have, the Capital Transit 5-cent cash fare at 19th and C and made that fare similar with the fare now used by Capital Transit from 7th and Constitution Avenue, to wit: Capital Transit fare plus 5 cents.

Q. So that it would have had the effect of raising the fare to those people who now walk to that terminal?

A. Yes.

Q. Now, I believe you stated that the companies approved that proposal contained in the Blanning report.

What action was had after they approved; what action was taken?

A. Well, when you say "approved," I do not think that is a fair statement of fact to imply what we readily acquiesced to. It was done under pressure and with a great deal of reluctance, upon the part of the companies.

What became of the acquiescence, the formal acquiescence which we delivered to the Regional Committee, I only know by hearsay.

Q. Well, the companies never took any steps so far as you know to file tariffs putting such rates into effect?

A. No tariffs could have been filed until it was agreed to by all parties concerned including the various regulatory agencies that have to be consulted before any tariff could be effective. Also, definite acquiescence of OPA had not been received, otherwise we would have been involved in interminable hearings.

888 The acquiescence which we signed, I believe, speaks for itself and *voers* those points.

It is an exhibit in this case.

Q. The reason that OPA was advised was because of the raise in these various fares?

A. Well, it was involved for several reasons. Presumably the several eliminations of 5-cent fares, for instance, might be construed as an increase in fare, and therefore we wished to get clearance from the OPA on the whole program prior to filing the tariffs. OPA might object and file intervention.

In other words, we wanted to save time. if formal proceedings were started it would have unquestionably take a great number of months to be made effective, whereas if the plan would or could be subscribed to by all parties prior to the filing of tariffs, it could be put into effect within 30 days.

Q. In other words, your company acquiesced in this plan but wasn't sufficiently strong for it to want to take the initiative of pushing it if it would involve this possibility of a hearing?

A. Quite the contrary, Captain Davis. I do not think that it was the company's place to push it when the proposal was made by Governmental agencies.

Q. Well, was it expected that some regulatory agency would be asked to initiate this raise and require the companies to adopt it?

889 A. I think I have explained that, that the acquiescence of the various agencies involved must be obtained informally in order to prevent, following the filing of tariffs, the precipitating of an avalanche of rate cases before the Interstate Commerce Commission and the Public Utilities Commission of Virginia, the Public Utilities Commission of the District of Columbia, and the Virginia Corporations Commission, in all of which the OPA might or might not have been a party.

Q. Now, I believe you also said that the various authorities in Arlington Counties suggested that the rates should be reduced to the same extent to which you have reduced rates serving these Army and Navy installations.

Will you tell us a little more about that and what the proposals were that have been made, and what proceedings have been started, if any, looking towards that end?

A. Well, I can only tell you that I have discussed the matter with the various members of the Public Utilities Commission of Arlington County and with several members of the County Board of Arlington County, that the chairman of the Public Utilities Commission has suggested to me that he did not believe any reduction to residents of the district would be justified if a similar reduction was not given to residents of Virginia.

The chairman, the exchairman of the County Board of Virginia who went out of office automatically, but is still a matter of
890 the Board, though, not chairman this year, told me that same thing last winter.

Q. Does the Arlington Commission have any jurisdiction over your rates?

A. The Public Utilities Commission?

Q. Of Arlington County; yes.

A. In an advisory capacity; yes.

Q. Advisory to whom?

A. Advisory to the Virginia Corporation Commission, which works very closely in conjunction with the Commission; that is, the Arlington County Commission works very closely in conjunction with the Virginia Corporations Commission and is consulted by that Commission on all matters pertaining to operations and fares and traffic within Arlington County.

Q. Now, within what zone would it be appropriate to reduce these rates in Arlington County in order to bring them to the point where they will satisfy the Arlington County people, assuming that you establish the district fare to these installations?

A. Well, Captain Davis, that is something that I could not possibly reply to from your point of view.

Assuming that your computation, or understanding of the case is correct, I presume it might extend a distance of 8 or 10 miles to other side of these buildings.

Q. We have not suggested that, you understand, we are
891 concerned in this proceeding only with the rate to these installations and you have raised the question, as I gather, it may affect your revenues because by doing so you might have to reduce certain other rates.

Now, I would just like to know how much would be involved by reducing such rates and how you think it should be done.

A. I have not advanced it yet, Captain Davis.

Q. You raised the point.

A. I said I thought we would have pressure brought upon us to do it. I said it would be, it will be, if the rate is reduced, that so far as Arlington and Fairfax is concerned, it will be over the entire length of its route.

Insofar as the other Virginia companies are concerned, it may extend only two or three zones, perhaps all the way on the other Virginia companies; that is something that only time and actual experience will tell us.

Q. In other words, you can't give any positive estimate of the extent to which the Arlington authorities would believe such a reduction appropriate, assuming you establish the District fares?

A. No; I can not, sir, and I have never been able to understand, Captain Davis, why it should cost more to travel 10 miles north than it does to travel 3 miles south over the same route.

Q. Well, just on that point, can you explain to me why it costs more if it does to operate from Memorial Bridge to the
892 Navy Arlington Annex or Pentagon, less than it does from the Memorial Bridge to the Pentagon Building?

Mr. HILL. Just a minute.

The WITNESS. May I have the question?

(Question read.)

The WITNESS. Will you reframe that? I do not understand it, Captain.

Capt. DAVIS. Strike that out, Mr. Reporter, and let me rephrase the question.

By Capt. DAVIS:

Q. Mr. Lane, I understand you now have a 5-cent fare to the Navy Annex whereas you do not have such a one from the Pentagon starting from the Bridge?

A. That is correct.

Q. Well, now, will you explain whether there is any difference in the cost of operating between those two points?

A. Captain, we do not operate from the Memorial Bridge to the Pentagon Building. If we operated, the fare would be the same, but we run no lines through that way.

Q. Well, now, is that 5-cent fare based upon a difference in cost or upon a difference in other circumstances?

A. The 5-cent fare was established arbitrarily at the instance and request of the Navy, to satisfy the Navy.

Q. In other words, there may be many cases where you feel it appropriate in the operation of your business to disregard the exact cost and establish fares which are reasonable under
893 the circumstances in view of the traffic conditions and density of population, and so on?

A. Well——

Mr. HILL. I object to that question. That is not at all what Mr. Lane said, "reasonable under the circumstances." He said no such thing. He said it was arbitrarily put in at the time.

Capt. DAVIS. Any arbitrary action would be action of his own company.

Mr. WHITTLESEY. Why? That doesn't make it arbitrary.

Capt. DAVIS. Well——

Commr. PATTERSON. He may answer the question.

The WITNESS. Well, I do not know that the reasonable'ss was considered at the time except from the psychological point of view of the Navy, we were anxious and endeavoring in every way possible to please the Navy and to do everything we could to give the best service possible.

As a natural matter, the tariff was filed from the west end of the Memorial Bridge and to prevent these people from walking across Memorial Bridge to get the benefit of the fare——

Commr. PATTERSON. Well, let's shorten this up. Did you consider it a question of reasonableness?

The WITNESS. No, sir.

By Capt. DAVIS:

Q. Mr. Lane, you spoke of the possibility of using a pass
894 and commented somewhat upon Mr. Trueblood's testimony, and I believe you also referred specifically to those possible difficulties of collecting fares in using such a pass, because of the fact that some people went to these installations and some people went farther on.

Now, at the present time, do you collect your fares going from the District to the Pentagon and to Arlington Annex when the passengers board the bus?

A. That is correct, in a mechanical fare collector.

Q. And would it be feasible to collect the fares outbound when they leave the bus at these two installations?

A. It would very easily slow up operations, it would also be impossible on busses having a rear door exit.

Q. Are your busses nonstop from the District up to the Pentagon Building and to Arlington Annex?

A. No; our busses are never nonstop in any operation. We have certain designated stops within the district where we stop if there are passengers to board or to be discharged.

If there is no occasion to pick up or discharge passengers, we operate nonstop; yes.

Q. Were you present yesterday during the testimony by Mr. Locke, and particularly that concerning the busses in Maryland?

A. I was.

Q. Now, assuming for the sake of argument that a certain differential in fare might be justified to these installations,
895 which, of course, is contrary to our views, but just assuming that, would you see any difficulty in having similar fares used in the District and to these installations which would sell for a few cents more than the District pass under which a division of the fare would be given between your company and the Capital Transit Company?

A. I see a great many difficulties, Captain, I think I have explained those in my direct testimony.

Q. Well, you did not cover such a pass.

A. Any pass; irrespective of the price that the pass sold for.

Q. Well, let us assume that these passes were limited to be used strictly on Arlington and Fairfax, of course, such pass would not be accepted by people using these lines, where would the difficulty be then in figuring the number of rides?

A. Well, the difficulty would come as a practical matter, if the pass was sold and if there was a special pass for Capital Transit and the Arlington and Fairfax line exclusively, no good on the other Virginia lines, it would still depend on the division of revenue from that pass upon the manual count of every operator who had a passenger boarding one of our vehicles, making the computation of the number of passenger rides, otherwise there could be no fair distribution.

Q. Wouldn't it be reasonable to assume that a person would not buy such a pass if it cost more unless he was going to use your line twelve times a week, approximately?

896 A. I do not think I would want to make that assumption; no.

Q. You haven't given it a great deal of thought?

A. I have given it a great deal of thought, discussed it for a period of seven or eight years in conjunction with the railroad company, and its operation, this operation, and the Capital Transit Company, and all of the ramifications between the two.

Q. Mr. Lane, you spoke of something about the equipment which you now have. Did you know the value of the equipment which you now use?

A. The book value?

Q. Well——

A. You can take it from our balance sheet.

Q. Is the book value approximately correct?

A. I sincerely trust so.

Q. You have a surplus number of busses to the same extent as the Capital Transit Company.

A. No, sir; we have a shortage of busses, yet, at the same time, we have increased our fleet by at least 25 busses, over 25 percent in vehicles, and a great deal over that in the seating capacity within the last twelve to eighteen months, and, incidentally, I might add that if it had occurred to me from my discussions with the War and Navy Department officials that there would be a request for a reduction of rates, I would never have ex-
897 pended this company the way I have in the last twelve or eighteen months, with my own money, anticipating a reduction in fares.

Q. You spoke of the restrictions on traffic, Mr. Lane, resulting from the gasoline rationing. Does your volume of traffic on these bus lines, has it increased a great deal, prior to the gasoline restrictions?

A. Yes; a reasonable amount, there has been a general increase which is pretty much uniform for the last five or six years, since about 1937 or 1938, until the peak burst of traffic which started in the spring of 1942 with the gasoline restrictions.

Q. Now, you spoke of the Pentagon and the Arlington Annex as having increased the time it takes for busses to make their total run. Is not a good deal of increase in time due to the fact of your letting on and letting off of additional passengers at these points?

A. No; I would say the majority of the increase in time is due to the circuitous route which we have to follow to serve one or both of the buildings, and if that route was not followed, it would decrease our running time materially if we could discharge on the main highway or pick up on the main highway.

Q. Just to clarify the record, which route do you refer to as being the direct route you follow to the buildings, both buildings?

898 A. Well, the route we followed prior to the building of these buildings, of course certain of the roads were eliminated by a portion of this new War Department system.

We formerly operated direct down Washington Boulevard and Columbia Pike to U. S. No. 1, and then into town. That is underneath the present system.

Q. Now, you spoke of an increased overhead for executive's salaries. Have those executive salaries been doubled in the last year?

A. In the last year?

Q. Yes.

A. The executive's salaries have been frozen during the last year by the order of October 2d or 3d, 1942.

Q. How about the year 1942 as contrasted with the year 1941?

A. I could not give you that without checking.

Q. There were substantial increases, were there not?

A. There were no substantial increases during the year 1942. There may have been substantial increases between 1941 and 1942 because, in 1941, the general officers went on a profit-sharing basis.

Mr. HILL. The first general increase, you did not take any salary for a good many years.

By Capt. DAVIS:

Q. You commented, Mr. Lane, somewhat on the railroad which was formerly affiliated with your company.

Is there any necessary relationship between the operating
899 cost of a railway of that character and of a bus line?

A. Well, there was some relationship between the operating cost of the old Auto Railway Company and the bus line, because the Auto Railroad was in fact busses running on rails.

Q. But merely because the railroad, under those circumstances, might be losing money, would not necessarily mean that a bus line would lose money serving the same territory, would it?

A. Be very close to saying that; yes.

Q. Does not the railroad have other heavy fixed charges resulting from the maintenance of the tracks and interest on its investment which the bus company did not have?

A. It might have, but this railroad wrote those all off and poured $250,000 worth of cash in which were not even reflected on the books of the company, in order to try to make it go.

Q. The whole thing could have been attributed to management of the railroad company, could it not?

A. I would hate to consider that because I was one of the managers.

Q. Or to other factors?

A. I would hardly think it was possible when the authorities having the railroad under their jurisdiction gave permission to abandon it, and for the reasons set forth by the management after very careful investigation.

Capt. DAVIS. That is all.

Mr. HILL. No further questions.

900 Commr. PATTERSON. You are excused, Mr. Lane.

(Witness excused.)

Col. BARRON. I believe Mr. Locke had something left over.

DEAN J. LOCKE resumed the stand and testified further as follows:

DIRECT EXAMINATION

The WITNESS. I believe I was asked to supply the numbers of individual busses concerned in the operation of the service on a particular day, August 4th.

Investigation of our traffic readings for that day disclosed that there were 81 different busses employed in the morning rush and 91 in the afternoon rush.

By Col. BARRON:

Q. You do not know what happened to them or what other service they were in during the remaining hours of the day?

A. No; I do not from this record.

Q. Who can tell us that?

A. Several branches of our company would be involved in running down the manifests and other operating records to determine on what other lines each of these busses, to which I have referred, operated on that day.

Q. You made no study of that?

A. No.

Q. Were you asked for any such study in connection
901 with Mr. Heberle's Exhibit?

A. No.

Q. I understand that Mr. Christman is generally informed as to the hours of these busses on other operations.

I would like to have him testify as to about how they are generally used.

Mr. DUNLOP. Just a moment, Colonel.

Col. BARRON. Yes, sir.

Mr. HEBERLE. Mr. Locke, in the interest of saving time, have you any other data or figures that you wish to give while you are on the stand now in connection with any of these matters?

The WITNESS. No, I believe not, on the assumption that you will later resume the stand.

By Mr. WHITTLESEY:

Q. Mr. Locke, have you made any computations or calculations to determine how many busses would be needed to perform the Pentagon operation if the busses were devoted solely to that operation?

A. Yes.

Q. How many?

A. In order that we might be prepared to answer such a question, we had the service operated on the Pentagon lines rescheduled on the basis of a self-sustaining entity, and we find that, with allowance for spares, 56 busses would be required in the morning rush and 63 in the afternoon rush.

In other words, we would have to set aside 63 busses in
902 order to provide service as a separate operating entity on that line independent of the balance of the system.

Lt. MATHEWS. Mr. Locke, when you say, "set aside" you do not mean by that that they would not be available at some time

to operate other rush hours; for example, the Navy rush hour that comes earlier than any of your Pentagon rush?

The WITNESS. We started out with the hypothesis that we would have a separate line needing those busses.

Mr. DUNLOP. Separate line and separate ownership, you mean?

The WITNESS. Well, that could be separate ownership; yes, sir.

Mr. QUIRK. Well, you can assume anything.

The WITNESS. Yes; the point is that here it is divorced from the system, operating as a separate entity, managerial or otherwise, but physically is what I am referring to here.

Mr. QUIRK. These gentlement on the other side ask you to assume certain things and then they just don't like the answer you make when you give it to them.

The WITNESS. I have given my testimony based on the question.

Capt. DAVIS. Let's assume for the moment that there would be, that you would use only the number of busses that you have here for the need of the Pentagon.

Now, isn't it true that the requirements are such that these busses, while being available when they are needed for
903 the Pentagon could also be used for the Navy rush, for example, which is earlier than some of the others?

The WITNESS. It is quite possible that some of these busses could be used in other service——

By M. WHITTLESEY:

Q. Mr. Locke——

The WITNESS (continuing). Although it is in an entirely different—it is not a reversible process, because if we assume at the beginning that it is a separately operated entity, we have a different labor set-up involved in that case which would work against the availability of these busses on other lines.

Lt. MATHEWS. Well, as a matter of fact, they are used on other lines.

The WITNESS. Well, but we are not running it as a seperate entity, we are running this Pentagon service as a part of our system.

Lt. MATHEWS. Yes.

The WITNESS. And with a great many more individual busses obtained from the system when most available.

Lt. MATHEWS. Did I understand the figures you gave included spares?

The WITNESS. That is right.

Lt. MATHEWS. Do you know how many spares?

The WITNESS. Ten percent.

Lt. MATHEWS. Ten percent?

904 The WITNESS. That is right.

By Mr. WHITTLESEY:

Q. Mr. Locke, this 63 busses that you spoke of, though, refers only to a separate opera .on to the Pentagon Building, does it not?

A. It involves providing the same service as is now provided over the Q–2 and R–2 routes.

Q. And that is only to Pentagon?

A. Only to Pentagon.

Q. So that if you ran any other service or made any combination of that service to the Pentagon Building you would have to have more busses than the 63, wouldn't you?

Exam. MATTINGLY. You mean the 55?

The WITNESS. I believe you would.

Mr. WHITTLESEY. I think that is the question Lieutenant Mathews asked.

Lt. MATHEWS. That would not necessarily be so, depending upon the relative time that the service is asked for?

The WITNESS. It depends upon when the demands occur, whether they are coincidental.

Lt. MATHEWS. They might stagger their hours?

The WITNESS. Yes.

Lt. MATHEWS. And it is a fact, is it not, that the Pentagon rush hours are not the same as the other rush hours, the Navy has one, for example?

The WITNESS. The peaks are not coincidental, of course,
905 the traffic on the Pentagon line is pretty well started where on some of the other groups it isn't much, the traffic to and from the Navy Annex and some of the other buildings, falls within the period during which service is provided for the Pentagon Building entirely.

Col. BARRON. We have no more questions.

Commr. PATTERSON. You are excused.

(Witness excused.)

Col. BARRON. Mr. Christman, please.

JOHN E. CHRISTMAN was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. State your name, address, and occupation.

A. John E. Christman, 2500 Thirty-first Street North East; superintendent of traffic, Capital Transit Company.

Q. How long have you occupied that position?

A. Since about 1936 or 1937.

Q. Are you generally familiar with the operations of your company?

A. I am.

Q. Are you particularly familiar with the Pentagon operation and the busses employed in that operation?

A. I am.

Q. If that were a separate operation, how many busses
906 would be used to make the number of trips that are now being made, currently made?

A. Including spare busses that would be required to operate the line, it would take 56 busses in the A. M. and 63 busses in the P. M.

Q. Be the same busses? How do you arrive at that?

A. By the demands of the service, we have to have a certain number of vehicles to take care of your demands, and if you have to haul a number of people you have got to put the busses out there to haul them.

Q. Of the busses now used in that operation, it varies from time to time, the number that you use, different times?

A. That is true.

Q. And you might use busses from any part of your lines at different times of the operation?

A. Under the present system of operation?

Q. Yes.

A. That is true.

Q. What are the total hours devoted to the use of busses to that operation, both morning and afternoon?

A. Total hours of an individual bus?

Q. Yes, sir.

A. Well, it can be anywheres from 20 minutes up to 4 hours.

Q. What would you estimate the average time a bus, well, you said 56 in the morning run; that is what you would use if you
907 were just making the morning run, would be 56 busses?

A. Colonel, I think you are getting the issue confused. First, you asked me how many busses it would take if it was an entirely separate operation. That figure I gave you. 56 in the morning and 63 in the evening, and allowing for 10 percent spares.

Then you asked a question as to our present method of operation and what the length of time was that the busses were on the line. That figure I gave you.

Now, if you will take and stick to one thing I will try to answer you, but if you are going to try to confuse the present method of operation——

Col. BARRON: Just answer the question and tell me.

The WITNESS. I am trying to keep the thing straight.

By Col. BARRON:

Q. All right, just try to answer the question, you don't need

What do you do with the busses after they are used on that run in the morning?

A. Some of them run to their garages; some of them are assigned to another run; and some of them are stalled on the parking facilities of the Pentagon.

Q. What proportion is being stored currently?

A. At the present time there are 41 busses stored between the morning and evening period at the Pentagon building.

908 Q. You could use them on other runs if you so desired?

A. If there was a demand for them, but there is no demand to use them.

Q. Your answer leads to the conclusion that you have an excess of equipment. Is that true?

A. I beg your pardon.

Q. I say, apparently you have more equipment than you need on the entire system considering——

A. No, sir; I didn't say that.

Q. Well, if you will let me proceed with the question, we will get along better.

A. Can I follow that up? You have a certain peak demand, and we have a certain number of busses to take care of that peak demand.

After that peak demand is over, if your traffic slumps off, you don't need the busses, and you have got to store them somewhere.

Q. Well, yes, I understand.

A. That does not signify that it is excess equipment.

Q. Well, now, on your entire system, what does it signify; I mean, you say you don't have any need for them on other parts of the system.

A. Not during the off-peak hours. Remember, there is a difference between the number of vehicles that is operated during off-peak hours and the number that is operated in the peak hours.

909 Q. Well, yes, if——

A. The ratio is about——

Q. Yes?

A. ——four and a half to one.

Q. I understand that, that you do have peak hours and you have peak hours on other runs at other times, don't you?

A. Yes, sir.

Q. And not necessarily these hours on account of your staggered hours of the various departments?

A. They are very close to these hours.

Q. How much equipment does your company currently have that is not being used?

A. Well, I would have to go into the records to get that out.

Q. How long would it take you to get that, you have a record of that pretty readily available, don't you?

Mr. HEBERLE. Colonel, I might say that that same question was asked of me yesterday and I agreed to look into it for you.

Do you desire to take it up a second time, and ask for it?

Mr. QUIRK. Oh, yes.

Col. BARRON. Well, now, let's don't be sarcastic. I am not that way with you and why be that way with me?

Mr. QUIRK. I did not mean it to be sarcastic. I thought it was kind of funny; and I apologize to you.

Col. BARRON. That is all right. I do not interrupt you people.

910 Mr. DUNLOP. Colonel, it is perfectly all right for Mr. Heberle to furnish it?

Col. BARRON. Yes, sure.

By Col. BARRON:

Q. Now, you say that you are generally familiar with all of the operations of your company. You have previously described the rush hour situation of the Pentagon. Will you take some one other rush hour situation and describe that, first by way of operations with other situations that you have in mind where you have to use any considerable number of busses?

A. Well, we have to use a considerable number of busses on every line that the company operates during the rush hour.

Q. All right, take any main line and state how many busses you use, how many you store during the day to meet the peak.

A. I will have to look those up from the records. I can't give all those figures to you. I can't carry them in my head.

Q. You only have the Pentagon figure in your head?

A. That is true.

Q. Would you take at least two representative peak-hour operations and give us the same figures?

A. On any particular line?

Q. Yes; two of them.

A. I will be glad to get that information for you.

Q. By period of operation and show whether or not the same situation prevails at the Pentagon.

911 A. Be glad to.

Mr. HILL. Take the line I represent, I would like to know——

Col. BARRON. Go ahead and inquire on that.

By Capt. DAVIS:

Q. Well, you do not have the exact figures, yet, you are generally familiar with the operations on the other rush-hour lines, aren't you?

A. Yes, sir.

Q. Well, now, as a matter of fact, do you use many of these rush-hour busses on the Pentagon rush hour, on rush-hour lines elsewhere, before and after the Pentagon rush?

A. Quite true.

Q. So that, let's assume that your total requirements for rush-hour busses altogether at Pentagon and the other busses you could use because of the overlapping, you could probably get by with a lot less than a thousand busses because you used the peak busses in one place first and then another; is that correct?

A. No; that line of reasoning does not hold true.

Q. Will you explain why not?

A. Because it depends upon the length of the line and the demands on the individual lines and whether you can inter-line the busses, get them from one line on to the other.

If your demand is all at the same time, it would take considerably more than that number.

912 Q. Well, now, why is it that you need to have 63 busses for this operation and only keep 41 busses over there during the day?

A. Oh, that is quite a different thing.

The Colonel asked me if this was an entirely separate line. How many busses it would take. I gave him that information, 67 in the evening and he then asked the question as to how many we stored over there at the present time, and I told him 41.

Q. In other words, the other busses are used elsewhere first to meet the peak demands there and then they are shot over to the Pentagon?

A. No; under our present system they are operated from one line to another line into the Pentagon.

Q. So the 63 which you would require if you didn't have any other lines is much more than you need for this line, is that right?

A. (No response.)

Q. Did you understand the question?

The Witness. Mr. Reporter, would you repeat the question, please?

(Question read.)

A. The 63 busses that I quoted would be the number of busses required if this line was a separate and distinct operation and the busses were used on no other line.

913 Under our present method of operation, there are considerably more than 67 busses, individual busses used to make up the present Pentagon service. 67 busses.

By Capt. DAVIS:

Q. Well, the number of different busses you use on that line depends on whether or not you send the same bus back, doesn't it?

A. That is true.

Col. BARRON. I do not believe that we have any other questions.

Commr. PATTERSON. You are excused.

(Witness excused.)

Col. BARRON. Go ahead and ask Locke your question, but do not have him go back on.

Capt. DAVIS. Mr. Locke, could you clarify, without taking the time to get up on the stand, the question that was just asked Mr. Christman?

Mr. LOCKE. May I have the last question read? Is that the one you want?

Col. BARRON. Counsel suggested some clarification here.

Mr. AWALT. I suggested clarification, but it was not in answer to a question.

Capt. DAVIS. Well, go ahead.

Mr. LOCKE. If the Commission please, as of July 31, 1943, the company had in operation during the morning rush hour 812 busses, they were out simultaneously.

During the middle of the day the number was 195.

914 At the height of the afternoon rush, the number was 844.

Mr. AWALT. How many busses did you use at 3:00 a. m.?

Mr. LOCKE. There are approximately 10 busses in our service at 3:00 a. m.

At present we are running the most of our service by streetcars where formerly we ran them with busses.

Since the need of conserving rubber, we are performing that with streetcars.

Mr. DUNLOP. Mr. Locke, on the theory that Captain Davis is trying to bring out where you would use only 10 busses at one time of the day, and if that is the number of busses you need at that time of the day, you would not need to have but 10 busses; is that right?

Mr. LOCKE. Well, if the demand were constant, throughout the twenty hours, for ten busses, that is all we would have.

Capt. DAVIS. We have never suggested any such theory.

Mr. DUNLOP. That is what your question ran to.

Capt. DAVIS. I am afraid you misunderstood me.

Mr. DUNLOP. Well, he has 63 busses. If they were separately operated he would need 63 busses in the afternoon, and come along in the middle of the day and have those 63 busses even if he didn't run any at that time he would still have to have them.

Capt. DAVIS. Yes; but since he has other lines he can use some of those busses on other lines, too?

Mr. DUNLOP. You asked him if it were a separate operation.

915 Lt. MATHEWS. Mr. Locke, do you have those figures that correspond to the 800 and those other figures for other times besides August 31st and July 31st?

Mr. LOCKE. Yes. You name the date at the end of any month and I can give the figures on them.

Lt. MATHEWS. Well, why don't we start at January, do you have that?

Mr. LOCKE. Yes.

As of January 30, 1943, the a. m. rush required 1,054 busses; the afternoon rush, 1,035.

In February——

Mr. DUNLOP. Can't we have the base?

Mr. LOCKE. Oh, I am sorry. The base, 256 in January.

Now, the February corresponding figure was 1,049, 268 in the base and 1,043 in the p. m. rush.

March 31st, 530, 266 and 1,037.

April 30th, 997, 260 and 991.

May 30th, 998, 257, 988.

June 30th, 887, 207, 928.

Now, the heavy drop in those figures, I think we should explain, is very largely due to the company's attempt to conform to the policies established by the Office of Defense Transportation to reduce the service and the mileage and gasoline consumption wherever practicable in the interest of the war effort, and beginning May 22, 1943, we were required to make a 20 percent cut in the mileage by the direction of the Office of Defense Transportation, and that, of course, reflected itself in the number of busses actually operated.

916

Mr. LOCKE. Mr. Locke, when you say they ordered a 20 percent mileage reduction, when was it called for; do you remember, called off? And when was the order rescinded?

Mr. LOCKE. August 26th, I think, is the date.

Lt. MATHEWS. Do you have the figures on August 31st compared to those others?

Mr. LOCKE. No; I do not have that. But I might say that there would not be a large increase over July due to the fact we have not been able to restore normal schedules yet.

Mr. LANE. May I have the July figures, you stopped at June.

Mr. LOCKE. 812 a. m., rush; 195 base, 844 p. m. rush.

Mr. HEBERLE. Mr. Locke, if the requirements throughout the day were the same as during the base hours with respect to, well, take the month of January, 256 busses were required; approxi-

mately how many would you need to fit that service, including spares?

Mr. DUNLOP. They level off through the day at that rate.

Mr. LOCKE. With a 10 percent allowance, we would need 282 busses but that would mean that every bus would have to run about 20 hours and I think the spare allotment would have to be increased upon that assumption.

917 Mr. HEBERLE. To what do you——

Mr. LOCKE. And I think we will have to add, you would have to add another 5 percent or perhaps even more spares to bring the number required in order to operate the service.

Mr. HEBERLE. Now, in order to maintain the base requirement, 54 busses for the line altogether, how many would you say would be required?

Mr. LOCKE. 1,054 plus 10 percent spares would make it 1,159 busses.

Mr. HEBERLE. Now, if it requires 1,159 busses for your morning peak and 295 busses as the base, for what is the difference between 1,159 and 295 purchased; are they purchased, for what requirements are they purchased?

Mr. LOCKE. They are in effect, solely for the additional traffic requirements which occur in the rushes over and above the base day requirement for service.

Mr. HEBERLE. These rushes would approximate how many hours out of the 24 hours?

Mr. LOCKE. Well, if we consider those periods in which the requirements are in excess of the number operated in the so-called base period, it would be something like 8 hours total per day. But during that 8 hours, many of these added busses would be operated only for a very short time.

Mr. WHITTLESEY. What is your generally considered rush hour period.

918 Mr. LOCKE. From 2 to 2½ hours in the morning and the same period in the afternoon.

Lt. MATHEWS. Is that the amount of time on any given route or overall routes?

Mr. LOCKE. The figures I am referring to apply to the system as a whole and apropos of that, because of the diversity of demands among the various lines, we are able to operate many of our busses and streetcars on two or three different lines during the course of the rush hour in many cases, and therefore get the maximum use out of the equipment.

Mr. HEBERLE. I believe you said, Mr. Locke, that the single rush hour, as you spoke of it last, as I understood, runs through about 2½ hours?

Mr. LOCKE. That is right.

Mr. HEBERLE. Well, were you to check the chart from which you got this information, would you state for the greater period of 5 hours in the rush period, at what line would the number of busses, would that line stand; that is, how many busses would you be operating for service of 5 hours or less?

Mr. LOCKE. Approximately 350 busses, without fares.

Mr. HEBERLE. All right.

Col. BARRON. Any other questions?

Commr. PATTERSON. Are there any other questions?

Col. BARRON. We have some additional exhibits which I want to offer through Mr. Kosh, he wanted to go back and
919 he is preparing an exhibit which we will introduce, I think, on Monday, and it is more or less a criticism of or answer to this Exhibit No. 89, and in the meantime, I would like to get this material in and let him go back to his office, if possible.

Commr. PATTERSON. All right.

Mr. WHITTLESEY. May I inquire, Mr. Commissioner, is this a continuation of the proffer?

Col. BARRON. Yes, that is correct.

D. A. KOSH was recalled as a witness and, having been previously first duly sworn, testified further as follows:

DIRECT EXAMINATION

Col. BARRON. I offer for identification and supplement of the proffer a table captioned, "Capital Transit Company Net Return on Net Worth, dated 1942.

By Col. BARRON:

Q. Do you have a copy of that before you, Mr. Kosh?

A. Yes; I do.

Q. Did you prepare this compilation?

A. Yes.

Q. What does it show?

Mr. HILL. Mr. Commissioner, it will not be necessary for us to renew our objection to the proffer.

Commr. PATTERSON. No; the same objection and the same ruling.

920 Mr. AWALT. That goes for all of us.

Exam. MATTINGLY. Is this going to be an exhibit?

Col. BARRON. Yes; 92.

Exam. MATTINGLY. I would like to be looking at it while you are talking about it.

Col. BARRON. Oh, I beg your pardon.

(Army and Navy Exhibit 92, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. State briefly what that shows.

A. This exhibit merely shows the three net incomes computed on Exhibit 84, but this account, instead of relating them to the net investment of the Capital Transit Company, relates this to the net worth of that company.

The figures, I believe, and the footnote are self-explanatory.

The first amount of common stock, gotten from the balance sheet of the company, and the two surplus accounts give a total of $28,900,000 some odd, which is used in determining return on net worth, and have deducted intangibles from such computation.

I have determined those intangibles in the method indicated in the footnote to that exhibit.

Those investments amount to $15,500,000, and the result is the total net worth which comes down to $14,500,000 net worth, roughly.

921 However, figuring the return on net worth, I have computed that ratio on a net worth exclusive of intangibles, which I believe, is the correct way.

However, for purposes of information I have also computed the ratio of the return to the net worth including intangibles.

In other words, the 38 percent or 31 percent and 20 percent are the ratio including intangibles and net worth exclusive of intangibles.

The second column, 17, 14, 9, and 6 percent are the ratio of net income to net worth including all intangibles.

In other words, net worth as taken from the balance sheet without making any deductions for intangibles.

Col. BARRON. Any questions?

Mr. AWALT. Mr. Commissioner, as I understand, the same arrangement that Mr. Prettyman has is true here that we reserve our cross-examination?

Commr. PATTERSON. That is correct.

Mr. AWALT. In the event the exhibit is accepted?

Commr. PATTERSON. In the event the exhibits are received.

Col. BARRON. I offer for identification as Exhibit 93, a tabulation headed "Alexandria, Barcroft, and Washington."

(Army and Navy Exhibit 93, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. I hand you a tabulation captioned "Alexandria, Bar-
922 croft, and Washington Transit Company" return on net worth, 1942.

Do you recognize that?

A. Yes; I prepared that exhibit.

Q. State briefly what that shows.

A. In this case the net worth is the same, the sum of the common stock and the earned surplus accounts on the balance sheet amounts to $723,000.

The percentages extended to two figures merely indicate the proportion of total net worth made up of common stock and made up of earned surplus.

The second part of the exhibit, the net income earnings as previously determined are indicated on the ratio of each of those nets to the net worth as found above, as I have indicated.

This net income before income tax and I. C. C. net operating income is 107 percent computed on net worth. Net income before war taxes would be 103.525 and the net worth after all taxes, the ratio of that net income to total net worth would be 33⅓ percent.

Col. BARRON. Any questions on that?

Mr. QUIRK. Same objection.

Commr. PATTERSON. Same ruling.

(Army and Navy Exhibit 94, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. I show you, and offer for identification, and asked to be marked as "Exhibit No. 94," table captioned: "Arlington
923 and Fairfax Motor Transportation Company, Return on Net Worth," dated 1942; did you prepare that exhibit?

A. Yes; I did.

Q. State briefly what does it show?

A. That exhibit is in form the same as previous exhibit covering earnings, 1942, for the Arlington and Fairfax, indicating a net worth of $74,000 made up of $25,000 capital common stock, $49,000 earned surplus. The net income before income tax; before income tax the net operating income is 88.6 percent of that net worth.

The net income after all taxes, however, to clarify the position upon that, does not indicate any net income after all taxes, but not upon interest, net income after all taxes is about 30 percent of net worth.

Q. You prepared all these exhibits from the same sources, I believe?

A. For the three Virginia companies, the basis for the figures is the reports filed with this Commission for 1942.

Col. BARRON. That is all on that one.

I offer for identification a table captioned "Washington, Virginia, and Maryland Coach Company, Return on Net Worth, 1942"——

By Col. BARRON:

Q. Did you prepare that exhibit, Mr. Kosh?

A. Yes; I did.

924 (Army and Navy Exhibit 95, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. Explain that briefly.

A. The net worth for this company as of December 31, 1942, is made up of $353,000 common stock, two surplus accounts, unappropriated surplus, and earned surplus of $1,125, making a total of $435,344, and that includes intangibles.

Mr. WHITTLESEY. Now, Mr. Commissioner, may I just have the witness explain the purpose of the exhibit, he says—pardon me.

May we have the witness explain, generally, the scope of the exhibit and his purpose in introducing it rather than have him read all of the figures into the record.

The WITNESS. In many cases, the Interstate Commerce Commission has in its reports and orders mentioned what the returns for companies then under consideration were on the basis of net worth, and that it might be of use to the Commission to have the earnings ratios to the net worths of these companies indicated, that is all.

I believe I was up to the figures—up to $295,000 item of intangibles.

Deducting that leaves a net worth exclusive of intangibles of $140,000 some odd, and again relating the ratio of net income to the net worth exclusive of intangibles, I get 118 percent before income tax and 79 percent after all the taxes.

925 Col. BARRON. I believe that is all on that one.

Mr. DUNLOP. What would be the percentage if there were common stock?

The WITNESS. If there were common stock?

Mr. DUNLOP. Yes.

The WITNESS. I presume surplus account would balance out, your books would still have to balance regardless of how they were made up.

(War and Navy Department Exhibit 96, Witness Kosh, marked for identification.)

By Col. BARRON:

Q. I offer as Exhibit 96, a table comprising two sheets, Sheets 1 and 2, captioned: "Effect on Net After All Taxes of Rate Reduction on the Various Companies of the Proposal for Uniform District Fare to and from the Installations in Virginia," reduced to all four respondents; did you prepare that exhibit?

A. Yes, I did.

Q. State briefly what it is intended to show.

A. Well, on two prior exhibits, one by the—on two prior exhibits there was determined the amount of rate reduction or the amount of decrease in gross that would accrue to each of the four respondent companies if the District fare were applied to this operation.

I have taken the amount of reduction in gross indicated for each company and computed what that would mean in net to
926 that particular company.

As I have previously explained, a dollar reduction in gross does not mean a dollar reduction in net if the company is subject to income tax.

The amount of that difference between gross and net depends upon whether the company is subject to excess profits tax, and on this computation it indicates on the Capital Transit Company, that the application of the District rate to the Pentagon operation would mean a reduction in gross of some $424,000 per year.

Because the amount of excess profits tax to which the Capital Transit is subject, that reduction in gross would mean a reduction in net of $84,000.

The difference, of course, would be——

Mr. WHITTLESEY. May I ask a preliminary question of this witness?

Commr. PATTERSON. You may.

Mr. WHITTLESEY. Does this exhibit speak for itself?

The WITNESS. Well, that depends.

If you feel that you understand it, I will stop.

Mr. WHITTLESEY. Is it complete in itself?

The WITNESS. Well, yes, sir, it is complete in itself to the extent that any exhibit is complete in itself and sometimes different people's understanding might be unreliable, offhand.

927 Commr. PATTERSON. Well, go ahead with your comment as to Capital Transit and that will apply to all of them?

The WITNESS. Except the last one.

Exam. MATTINGLY. Well, go ahead.

The WITNESS. The wage rate reduction; reduction in gross amounting to $441,000, because of the company being in the excess profits tax bracket, the reduction in net would be only $84,000.

Now, the cost to the company of that $84,000 would mean a decrease in rate of return of three-tenths of one percent.

Now, the figures for the A. B. and W., for the Washington, Virginia, and Maryland, are comparable figures, and there is nothing different than in the computation for the Capital Transit Company.

In the case of the Arlington and Fairfax, at the top of the second sheet, the indicated reduction in gross of $55,000, I have

shown the amount on which they pay the excess profits taxes, and hence a casual computation from the exhibit to determine national and straight taxes, and again a reduction in $55,000 gross, means a reduction of $13,000 net.

The footnote is self-explanatory, and I don't think I would have to go into that, it just applies to that particular company.

Mr. DUNLOP. Have you computed the operating ratios of these other companies?

928 The WITNESS. Yes.

By Capt. DAVIS:

Q. Would you state what they are, please?

A. For 1942, the operating ratio of Capital Transit was 79.6 percent.

For six months of 1943, that operating ratio was 75.5 percent.

For the Arlington and Fairfax Company, comparable figures are, 1942, 82.7 percent.

Q. That is Arlington and Fairfax?

A. That is Arlington and Fairfax; 82.7 for 1942, and 80 percent even for the first six months of 1943.

In the case of the Alexandria, Barcroft and Washington, the operating ratio for 1942 was 65.5 percent, and for the first six months of 1943 it was 61.8 percent.

In the case of the last company, the operating ratio for 1942 was 85.8; and for the first six months of 1943, it was 91.2.

Q. That is the Washington, Virginia, and Maryland Company?

A. That is correct, Washington, Virginia, and Maryland.

Q. Mr. Kosh, in your discussions the other day, you referred to these war taxes, and I believe there was some other discussion of that by some of the other witnesses since that time.

In considering that, do you believe it appropriate, or does the Commission consider resports by Congressional Committees dealing with the tax bill?

929 A. I understand the Commission would probably take judicial notice of this, and it is merely a compilation here of excerpts and abstracts from the indicated reports of the Committee on Ways and Means in connection with the four revenue bills of 1940 through 1942.

They are direct quotations, nothing has been added.

Capt. DAVIS. For a matter of convenience, we would like to introduce this as an exhibit, and we will ask the Commission to take judicial notice of these committee reports, to the extent that they may be appropriate.

Mr. QUIRK. To what point is this relevant?

Capt. DAVIS. With reference to the consideration of war taxes.

Mr. QUIRK. You mean the scheme to get rid of taxes?

Capt. DAVIS. We offer it as Exhibit 97.

Mr. PRETTYMAN. We object to it on the ground that it does not purport to be complete and has no possible relevance to any issue in the case.

Capt. DAVIS. We believe it is relevant, Your Honor.

Commr. PATTERSON. It is accepted on the same footing as the other exhibits previously offered.

(Army and Navy Exhibit 97, Witness Kosh, marked for identification.)

Col. BARRON. I believe that is all at the moment we have for Mr. Kosh.

930 Commr. PATTERSON. I think we might now take up——

Col. BARRON. We do have one other exhibit here. I think that some of the counsel have it and have been looking at it.

I am sorry we do not have copies of it.

Mr. QUIRK. Colonel, you mean this petition signed by all the people over there?

Col. BARRON. Yes.

Mr. QUIRK. Well, Mr. Commissioner, that petition and this other testimony that was given here by the employees who expressed their hopes and emotions is clearly irrelevant.

It reminds you of the Captain who went before the French court and the court said: "Who appears for the complainant."

He said, "I do, Your Honor, I have no facts to offer in this case, but I am choked with emotion."

The court said, "Well, in that event, you can kiss the court."

Col. BARRON. Well, these people were choked up with emotion and they asked that we transmit this to you and that is all I am doing.

Mr. WHITTLESEY. Mr. Commissioner, I ask that a copy of the dodger that was distributed at the War Department be included as a part of the proffer in this case.

Col. BARRON. Be glad to do it. I have not seen it, I don't know what it is, but I will be glad to include it.

What will that be, will it be Exhibit 98?

931 Commr. PATTERSON. I think so far as those are concerned, we might file them in the correspondence files.

Exam. MATTINGLY. We have a large number of similar letters on file in the correspondence file.

Col. BARRON. Well, I will state what this is. It is a letter addressed to General Lewis, signed by the War Department Branch, Navy Department Branch, United Federal Workers of America, C. I. O.

They say:

"Submitted herewith are a group of petitions signed by employees of the Federal government for use in connection with hearings currently being conducted in regard to bus fares charged to national buildings located in Virginia just outside of Washington. Over 2,000 employees have signed these petitions."

Mr. QUIRK. Is that all you could get out of these 30,000?

Col. BARRON. I don't suppose they took it and tried to get all of them, they do not indicate that they did.

Commr. PATTERSON. They will be filed in the correspondence file for information.

Col. BARRON. The A. B. and W. executives, I understand at least one of them will be available this afternoon, and we would like to proceed to that company as we have with the others.

Commr. PATTERSON. Will they be here Monday morning?

Col. BARRON. Sir?

932 Commr. PATTERSON. Will they be here Monday morning?

Exam. MATTINGLY. Let's go off the record.

(Discussion off the record.)

Commr. PATTERSON. All right.

(Witness excused.)

Commr. PATTERSON. We will take a recess now until 9:30 Monday morning.

Mr. QUIRK. Mr. Commissioner, this has all been off the record.

I think I want this statement on the record.

I have advised the Commissioner presiding that I have a hearing in Raleigh, North Carolina, in another case, which has been set for some time and set after some difficulty before a Joint Board.

If this case is continued on Monday, I can not be here and one of the important respondents, and the only one that serves all of the installations involved in Virginia, will not be represented by counsel unless over the week end they can make some other arrangement.

I suggest, Mr. Commissioner, with all due respect, that is not setting a fair hearing.

Commr. PATTERSON. Do you care to say anything with respect to that?

Mr. HILL. I would like to join in Mr. Quirk's expression.

Col. BARRON. The only thing I could say is that we have

933 been instructed by our superiors not to request any postponements and continuances, and have not done so.

They have urged us to expedite our case in every way possible and that we have done.

I might also observe that with many counsel as in a case of this sort, they are busy lawyers, it is a thing that would have to be

considered, and it would be unreasonably drawn out if every counsel that has some case elsewhere were granted a continuance.

Commr. PATTERSON. You do not concur in any such request?

Col. BARRON. No, sir.

Mr. QUIRK. I have only asked for a postponement of two days.

Exam. MATTINGLY. Off the record with this discussion now.

Mr. HILL. Mr. Commissioner, I started to say before we went off the record that I join in Mr. Quirk's statement, and we feel that we are being forced to take action that we sincerely feel is unfair.

We feel that each of the respondents will be weakened by the absence of the A. B. and W.

Now, whether you feel that you must bow to the wishes of the two Cabinet officers, we do sincerely feel that it is contrary to all the traditions of the Interstate Commerce Commission for fair dealing.

Mr. QUIRK. It is not a fair practice and it will be an
934 arguable point if this case should go to a court, and I hope that it never will.

Col. BARRON. We are willing to risk that, though.

Mr. QUIRK. In this case, too, Mr. Commissioner, these law firms suffer like all others have suffered, two members of our forces are in the service.

Commr. PATTERSON. This is an investigation by the Commission, and all parties will have sufficient opportunity to be heard before the investigation closes and there will not be anybody shut out.

Mr. QUIRK. But, Mr. Commissioner, on that score, I can't let that go, my client being an absolutely necessary party here.

The War Department are proper parties but not necessary parties.

His case is against my client who is being unjustly deprived, if required to go ahead, he is being charged here and is entitled to be represented by counsel if they want to, and we won't be having a fair hearing if I am absent, my client——

Commr. PATTERSON. Your client will be having a hearing.

Mr. QUIRK. Not by counsel, please.

It is more important, I think, than you probably appreciate at the moment. I wish you would be considerate.

Col. BARRON. There are plenty of lawyers.

935 Commr. PATTERSON. We will recess until 9:30 Monday morning.

Col. BARRON. The witnesses will be here for cross examination.

Commr. PATTERSON. That is right.

(Whereupon, at 12:45 o'clock p. m., the hearing was adjourned to Monday, September 13, 1943, at 9:30 o'clock a. m.

936 Before the Interstate Commerce Commission
Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM B,
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C., Monday, September 13, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a. m.
Before G. H. MATTINGLY, Examiner.
Appearances: (As heretobefore noted.)

PROCEEDINGS

938 Col. BARRON. I would like to put Major Ristrop on.

Mr. QUIRK. Mr. Examiner, in view of all the conversation had Saturday about my engagements, I think the record ought to show that they gave me what I might characterize as a midnight postponement of that hearing until October 1. Therefore I am here.

Mr. HILL. Mr. Examiner, I would like to state into the record that that does not change the sentiments which I expressed in the record on Saturday. I still feel we are not accorded a fair hearing on the subject.

Exam. MATTINGLY. All right.

Major PAUL L. RISTROP recalled and testified as follows:

Direct examination (cont.) by Col. BARRON:

Q. Major, have you recently made any check of the busses in use on the Pentagon operation?

A. Yes, sir; some checks have been made at my direction.

Q. Did you make a check on the afternoon of September 10 of this year?

A. That was Friday afternoon; yes, sir.

Q. What was the number of busses found to be in use on that date?

A. I don't recall from memory, sir. On the afternoon of September 10, which was Friday afternoon, the Capital Transit
939 busses S-2 and Q-2 made a total of 145 trips, using 62 busses.

Q. What is that piece of paper you are looking at?

A. Just a scrap of paper given to me by Captain Logan who made this study. He will be over later in the morning.

Q. Did you make a check of the morning operations, the following day; that is the 11th?

A. On the 11th Capital Transit busses S–2 and Q–2 made a total of 165 trips using 58 separate busses.

Q. How many of those were ODT busses?

A. According to the information given to me, they were 12 ODT busses used on the afternoon of the 10th of September, and 11 ODT busses on the morning of the 11th.

Col. BARRON. That is all the questions we have at this time. That is all.

(Witness excused.)

Col. BARRON. I believe that Mr. Mitchell is here, is he not?

Mr. QUIRK. Yes, sir; he is here.

ROBERT T. MITCHELL recalled and testified as follows:

Cross-examination by Col. BARRON:

Q. State your name, address and occupation.

A. Robert T. Mitchell, 708 West Braddock Road, Alexandria, Virgina, vice president and trucking manager of the A. B. & M.

Q. How long have you held that position?

A. I have only been a general officer of the A. B. and M.
940 Transit Company since March 1942. I have had the position of trucking manager since 1937.

Q. Can you describe briefly the routes, bus routes operated by your company, giving the terminals?

A. Well, the A. B. and W. operates bus service in interstate commerce between the District of Columbia and nearby Virginia, including Alexandria, Fort Belvoir, Mt. Vernon, portions of Fairfax County, and South Arlington County, including the Pentagon Building, Arlington Navy Annex, National Airport, and the Army Air Forces Annex No. 1.

They operate over both the Highway Bridge, known as the 14th Street Bridge, and the Memorial Bridge.

The Washington terminal of the company is at 12th and Pennsylvania Avenue, Northwest; the main office is at Girard in Alexandira.

Q. What is the terminal of the District?

A. 12th and Pennsylvania Avenue.

Q. What other places do you stop at?

A. Well, we have designated stops all along the various routes in the District of Columbia.

Q. Would you name a few of those?

A. Well, on the 14th Street route, we have a stop at 12th and Constitution Avenue; another at 12th Street, just north of Independence Avenue; another one at C Street between 12th and 14th
Streets; in front of the Bureau of Engraving and Printing
941 on 14th Street, and at the Jefferson Memorial and Potomac Parkway.

On the Constitution Avenue route we have stops on Constitution Avenue at 17th, 19th, and 21st Streets, and then on 23rd Street just off Constitution.

Q. You don't do any cross state business in the District?

A. Yes, sir; we have cross state rights within the District between points south of Maine Avenue, and the south end of the Highway Bridge, between those points, and downtown Washington.

Q. What is the total mileage of your system?

A. The total miles of route that we operate?

Q. Yes, sir.

A. 150.

Q. What is the bus mileage operated?

A. Approximately 600,000 a month.

Q. A month?

A. Yes, sir.

Mr. HILL. Colonel, may I just ask one question for clarification?

Mr. Mitchell, have you examined Exhibit 91, the large map put in Saturday?

The WITNESS. Yes, sir; I have.

Mr. HILL. Are your routes correctly portrayed on there?

The WITNESS. Yes, sir; I have examined it, and as far as I can determine the routes are laid out correctly.

942 Mr. HILL. Thank you.

By Col. BARRON.

Q. What is the nature of your traffic—by that I mean do you have any counter flow, as that term seems to be used here?

A. You mean is it used in these particular proceedings?

Q. Yes, sir.

A. Well, if by counter flow you mean that we are transporting passengers to these particular stations, which is in the reverse direction of the majority of travel in given rush periods prior to the installation of these buildings, I would say generally yes, there is some. But I will add to that that in no instance do we serve these installations without additional mileage. There is additional mileage over the route operated by these buildings and the special services provided during rush hour called for additional mileage only. It is not just merely being on the regular route and passing those points and dropping off passengers.

Q. To what extent do you have to leave your regular route to go to the Pentagon Buliding?

A. On one particular route that we operate between Washington and Alexandria, known as the Ridge Road route, there has been .6 of a mile for each one-way trip added to that particular route, and we operate 192 trips a day over that route.

Q. What other deviations do you have to make to get to these other installations and how much are they?

943 A. Well, between Washington and New Alexandria, which is just south of Alexandria, we operate that route via the Memorial Highway, taking in the National Airport and the Army Air Forces Annex; there is 0.4 of a mile each trip for 40 trips on that schedule.

Another route we operate, Washington to Arnold Valley, that is near the Army and Navy Country Club, is 2.7 miles for each round trip to operate that route via the Pentagon Building and the Navy Annex.

Q. What occasions the 0.4 of a mile? Where does that come in?

A. Which 0.4 of a mile?

Q. There was some deviation there.

A. Well, that was the previous one I was referring to in reference to the 0.4 of a mile necessary to operate by the Army Air Forces Annex.

Q. I see.

A. That comes about by having to leave the regular route through the National Airport and double back to the Mt. Vernon Highway to pass the front of the Army Air Forces Building, which we were requested to do by the War Department.

Q. Any other deviations?

A. Yes. I just referred to the Arnold Valley Route, which requires 2.7 miles per one-way trip additional mileage to

944 operate; 76 trips a day on that particular route. Our Washington 14th and Quincy route, which is in Arlington County, which is 1.8 miles additional necessary to serve both the Pentagon and Navy, there were 68 trips a day.

Q. Is that a largely residential area out there now?

A. That is at the end of these lines?

Q. And most of the route?

A. It is residential after we leave the Pentagon Roadway System, which has taken in quite a bit of the area that was previously residential; but from the time we leave the north side of the Potomac River until we pass the Navy Annex, there is nothing to be served except the Pentagon Building and the Navy Annex; from there out it is residential.

Q. Describe briefly the——

A. I would like to get one more route in there which is very substantial.

Q. All right.

A. On our so-called Columbia Pike route, we operate 231 trips a day, and it is necessary to operate 0.4 of a mile each one-way trip to operate through the Pentagon Building on that route.

Mr. QUIRK. I suggest you describe what you mean by the Columbia Pike route.

The WITNESS. That is busses that operate from 12th and Pennsylvania Avenue out Columbia Pike as far as——

Exam. MATTINGLY: Crossing which bridge?

The WITNESS. That particular route operates crossing the
945 14th Street Bridge.

I might add for clarification that the two and seven-tenths additional miles on the Arnold Valley route, and 1.8 on the Quincy are via the Memorial Bridge, greater distance.

The Columbia Pike route operates to the Pentagon by the north side of the Navy Annex, and then to Columbia Pike, and operates west on Columbia Pike as far as Baileys Crossroads, where connection is made for Annandale, which is some three miles further in Fairfax County.

By Col. BARRON:

Q. You were going to explain some other deviation.

A. Well, I would just like to summarize that by saying that from the records, it indicates that we operate daily on our regular scheduled routes, exclusive of any particular services operated to these four installations, 551 miles to serve the buildings on regular scheduled routes.

Q. What number of busses do you use in this operation all told?

A. In our entire operation?

Q. Yes.

A. We own 153 busses. We have five tractor trailers leased from the government, making a total of 158 pieces of equipment. We have scheduled to operate daily 140 pieces of equipment in rush periods. In non-rush periods the schedule calls for 48 busses.

946 Q. Have you made any attempt to allocate the equipment on operating costs to these installations as separate from other operations?

A. No, we have not made any attempt to do that. We have given that serious consideration, particularly since the petition filed by the War Department, and I am told by our certified public accountant, the auditor for the company, that it would entail considerable time and expense to do that. All of these installations are on our regular routes and it would call for assumptions and allocations all along the line to arrive at any definite cost.

Q. Do you think any allocation that might be made within a reasonable time might be accurate?

A. That is what I am told by our accountant. That is as far as I know.

Q. I wish you would describe briefly your rate structure, what you charge, for instance, from your terminal in Washington here—where did you say it was?

A. 12th and Pennsylvania Avenue.

Q. Yes—to the Pentagon and those other building, what would your cost be for a one-way trip?

A. In cash fare in all instances, to any of these installations, it is 10 cents. In the case of the Army Air Forces Annex, there is a 26-
947 trip one-way trip book sold for a cost of $1.95, which is 7.5 cents for each one-way trip. There is a fare in effect between the Lincoln Memorial and the Navy Annex via Arlington Ridge Road, 5 cents, making connections with Capital Transit at Lincoln Memorial. All other cases the fare is 10 cents.

Q. Do you have any transfer arrangements with any other companies?

A. We have no transfer arrangement with any other companies.

Mr. QUIRK. May I interrupt this?

This 5-cent fare from the Navy Annex is really an intrastate fare according to the published tariff of the I. C. C., is it not?

The WITNESS. Yes, sir; it is.

Mr. QUIRK. The fare is published to apply to what?

The WITNESS. Between the Arlington Ridge Road and Memorial Bridge.

Mr. QUIRK. And for the convenience of the passengers and for your own convenience, you actually take the passengers across to the Memorial Bridge and to the Lincoln Memorial and transfer them there instead of the Virginia side?

The WITNESS. That is correct. We are requested by the Navy Department to make a connection with the Capital Transit and it seems that the Lincoln Memorial Circle was the most logical place to make that connection.

Exam. MATTINGLY. When you say transfer, you mean just afford
948 him an opportunity to get from one line to the other. You don't issue a transfer ticket or anything.

The WITNESS. That is correct. It is just a meeting of busses at that particular point with a lesser fare than if they boarded the bus at any other stop within the District of Columbia.

Mr. QUIRK. In other words, if you really published an interstate fare for the kind of service that you are really performing for the reasons that you have already explained, the standard interstate fare for that service would be 10 cents, instead of 5, would it not?

The WITNESS. That is correct.

Exam. MATTINGLY. While you are on that point, would you explain why this fare is published to the Navy Building and not to any of the other places involved here?

The WITNESS. The Navy Annex was the first of the three Army installations; that is exclusive of the National Airport. That was constructed. There was no transportation for the places there except from the Capital Transit lines to the A. B. and W. or the Arlington Fairfax, and we were requested to make the connection with a 5-cent fare, which we did.

When the Pentagon, which was the next installation to be erected, was ready for occupancy, it was determined that the facilities of the Virginia companies were not enough to take care of that that and the Capital Transit would operate service to that building.

949 We filed a 5-cent rate, and we felt that that would be in a position to transport the passengers to that building, and it did not necessitate a cheaper rate on our line.

The Army Air Forces Annex was the next installation opened and the 7.5-cent ticket fare there came about the same way the Navy fare did, by request for a cheaper rate, which we complied with.

Mr. QUIRK. Mr. Mitchell, in your service from the Navy Annex that you performed in the manner described on this intrastate 5-cent fare, do your busses stop at or go near the Pentagon Building?

The WITNESS. They do not, sir. As I said when I referred to that fare, that it was filed by the way of Arlington Ridge Road, which does not pass the front of the building.

Exam. MATTINGLY. Could you identify on this—I believe I see it now. It runs right along beside this cemetery.

The WITNESS. The cemetery wall, yes. Of course, at that time the Pentagon Building was not placed as it is now.

Mr. QUIRK. What would be the intrastate fare from the Pentagon Building to the Virginia side of the Memorial Bridge, if you had the same kind of service?

The WITNESS. It would be and is 5 cents if you operate from the Pentagon Building to the west side of the bridge. There is an intrastate fare of 5 cents in effect there now.

Mr. QUIRK. Well, then, the difference between this
950 situation between the Navy Annex and the Pentagon Building as far as this intrastate fare is concerned is one of service rather than fare.

The WITNESS. That is correct, sir.

Mr. QUIRK. Strictly speaking it may be that by taking these passengers over the Lincoln Memorial, D. C., side of the bridge, you may be in some question as to whether or not you are doing that without a tariff addition; you may be in violation of the Interstate Commerce Act.

The WITNESS. That is right.

By Col. BARRON:

Q. Now, how have the rates been arrived at? How were they established?

A. Which rates do you speak of?

Q. Well, the rates that apply to any of the government installations that you have discussed.

A. Well, the 10-cent rate from the District of Columbia to points in nearby Virginia, have been established rather for the past 20 years to my knowledge.

Q. There have been no changes?

A. There have been no changes in the 10-cent rate from the District to locations of these particular buildings on our routes.

Q. In the construction of these new buildings, they did not make any change in your rate structure?

A. Only the rates which I have referred to asking specific
951 reductions put in for the benefit of the people in these buildings. The cash fare has not been reduced.

Mr. DUNLOP. You mean that 10-cent rate was an interstate rate fixed by this Commission?

The WITNESS. Well, no; it was at the time that that rate was established; the Interstate Commerce Commission had no control over the operations of that when we filed for the grandfather rights in 1935, and secured our certificates. We secured tariffs and carried those rates into our interstate certificates received.

Mr. QUIRK. The motor carriers act was made effective in August 1935; as I understand the stiuation these rates were fixed originally prior to the passage of the motor carriers act, and simply carried over under the grandfather clause.

The WITNESS. Yes, sir.

By Col. BARRON:

Q. Have you had any hearings on intrastate rates before the Virginia Commission at any time?

A. Intrastate rates?

Q. Yes.

A. Yes, we have.

Q. When did that occur?

A. Well, the last rate case I recall was either '31 or '32.

Q. What was the nature of it?

A. Well, the street electric railway at that time was about to be abandoned, and there was a question of straightening
952 out the rate structures between the railway company and the bus company, which was a successor.

There was a very short hearing and no rates were changed. It was just to clarify the rate structure.

Q. As I understand, you had operated electric lines at one time.

A. Well, the A. B. and W. Transport Company has never operated any electric lines, but the Washington-Virginia Railway Company started operations, I believe in 1894, maybe under a different name, but it subsequently became the Washington-Virginia Railway.

Q. All I am getting at is in the operations you have described here, there is nothing other than bus operations involved, is that correct?

A. Except that to my knowledge, in 1923 until 1932, the railway company operated between 12th and Pennsylvania Avenue and points on the Virginia side of the Potomac River at a fare of 10 cents, the same as the fare is today.

Q. But nothing but bus operations now.

A. At the present time there is nothing but bus operations.

Q. Have you made any investigation of your cost of operation per bus mile as we have been using that term here?

A. Over our entire system?

Q. Yes.

A. Yes, sir; we have a monthly record of that. I don't
953 happen to have it in my possession at the moment, but it can be secured.

Q. Well, if you happen to recall what your costs are, that is enough.

A. I don't recall. It has been going up monthly, and I don't recall what the recent cost was.

Q. Could you get the information say the month of January and the last two or three months, just to give us an idea of what the average is?

A. I can get it for all of this year, including July. I don't know whether August is prepared or not.

Q. Yes; just some brief over-all figure.

A. Yes.

Mr. QUIRK. Just a moment, Colonel, please. With the understanding that we object to the system figures as irrelevent and immaterial, we would be very glad to furnish the information requested. I think Mr. Mitchell now has it.

The WITNESS. These are figures which I requested our accountant to get for me for this morning in case we needed them. It only shows for the first six months of 1943, January to June, inclusive. The operating expense per mile, exclusive of taxes, which is 26.71; including taxes 38.71.

By Col. BARRON:

Q. That is over what period?

A. Six months, January to June, inclusive, 1943.

Q. Well, what were the taxes? Give the income sep-
945 arately, if you can.

Mr. QUIRK. What is that?

Col. BARRON. I would just like to know what type of taxes he refers to?

The WITNESS. It includes income taxes.

By Col. BARRON:

Q. What is the total aggregate amount for last year?

A. Total amount of taxes?

Q. Yes.

A. For that period?

Q. Yes, sir.

A. I do not know.

Mr. LANE. I object on the grounds that it is already in the record by various and sundry exhibits.

Mr. MATTHEWS. That is an accrual figure anyhow, isn't it? It is not an amount which has been paid which you put on your books. It is anticipated taxes for that period.

The WITNESS. That is right. It is accrued cost.

Col. BARRON. I have no other questions.

Redirect examination by Mr. QUIRK:

Q. Now, Mr. Mitchell, I am not sure whether you explained all of your current rates between the District of Columbia and Virginia or not.

If you did not, will you take them up in order and do so?

A. Yes. I was asked to give the rates to the buildings
955 only. If you want me to carry that further, I will.

Q. Yes.

A. The established interstate rate between the District of Columbia and the business area of Alexandria is 5 cents. The established rate between the District of Columbia and Baileys Crossroads on Columbia Pike is 15 cents. Operating between D. C. and the New Alexandria, the established fare is 12 cents.

In all cases the intrastate fare is based on 5-cent zones.

Q. How many zones do you have intrastate?

A. In our operation between Washington and Fort Belvoir we have a 10-cent interstate rate to Virginia and in addition to that five 5-cent zones, with a total cost of 35 cents for the one-way trip to Fort Belvoir. That is the largest zone fare we have.

Q. Does your company transport a substantial number of passengers to and from these federal installations who live in Virginia?

A. Yes, sir; we do.

Q. And those passengers pay the zone fares, intrastate, whatever they may be, 5 or 10 cents or even 15 cents?

A. That is correct, sir.

Q. Have you had any complaint from them as to the fares in Virginia?

A. No, sir.

Q. Now, Mr. Mitchell, I think it would be advisable for
956 you to describe your services in a little more detail, the schedules during the rush hour and the base period, between 12th and Constitution and Virginia points, including the federal installations that are involved in this proceeding, via both routes, over the two bridges.

A. We operate between 12th and Pennsylvania Avenue and Alexandria and New Alexandria, and via the Memorial Highway and National Airport, Army Air Forces, every 15 minutes in base operation. The busses alternate one over the highway bridge and the other over the Memorial Bridge; 30-minute service over either of the two bridges.

Exam. MATTINGLY. Where is this New Alexandria that you speak of?

The WITNESS. Just south of Alexandria on the south side of Hunting Creek, as shown on the map.

We operate a service from 12th and Pennsylvania Avenue via the Pentagon Building to Alexandria with a base schedule of every 12 minutes.

We operate from Washington—that Alexandria operation, by the way, is over the Highway Bridge.

We operate from Washington to Arnold Valley over the Memorial Bridge on a 30-minute headway, which passes both the Pentagon Building and the Navy Annex.

We operate from Washington to 14th and Quincy Street South,
Arlington, over the Memorial Bridge every half hour,
957 through the Pentagon and by the Navy Annex.

The Arnold Valley and 14th and Quincy lines jointly supply a 15-minute headway between 12th and Pennsylvania Avenue and the Pentagon Building and the Navy Annex.

In other words, the schedule alternates so as to make it an even 15-minute service.

We also operate 12th and Pennsylvania Avenue and points on Columbia Pike via the 14th Street Bridge every 10 minutes during base periods, which passes both the Pentagon Building and the Navy Annex.

In the rush periods there is special service operated between 12th and Pennsylvania Avenue and the National Airport and Army Air Forces Annex on the one hand, and between 12th and Pennsylvania Avenue and the Arlington Navy Annex on the other.

We also operate a service from the Lincoln Memorial to the Navy Building to supply a transfer to the Capital Transit at that point. In the morning that is a shuttle service operating back and forth. In the evening it is operated on a different basis. The busses are scheduled from the Navy Building, and when they arrive at the Lincoln Memorial they are dispatched from there to various points for other rush-hour service.

By Mr. QUIRK:

Q. Do the busses that serve the Federal installations in-
958 volved in this case all carry passengers to and from other points in Virginia?

A. All of the scheduled operations carry passengers to other points in Virginia on the way by these buildings; yes.

Q. In other words, you do not set aside particular busses to serve these particular Federal installations?

A. No; we do not.

Q. Now, getting back, you have complete intrastate rights from the Virginia Corporation Commission of Virginia within Virginia, do you not?

A. We do over all of our lines.

Q. Now, you have already outlined in a sketchy way your intrastate rights or intradistrict rights within the District of Columbia. Just to make the record as clear as you can, will you describe, Mr. Mitchell, whether, under the District rights, you can pick up and deliver passengers at any point along the line within the District that you see fit to do so.

A. We do not have full intrastate rights in the District, if you consider being able to pick up at any bus stop and let off at any other bus stop in the District of Columbia.

Q. What can you do?

A. Well, we do have specific rights to pick up passengers on in-bound trips at any stop south of Maine Avenue and carry it to a point north of Maine Avenue. On the out-bound trips we
959 can pick up at points north of Maine Avenue and carry to points south of Maine Avenue.

Mr. HILL. Where does Maine Avenue come in on that route?

The WITNESS. It is old Water Street.

By Mr. QUIRK:

Q. Now, in the District of Columbia, for those District services, you charge what fare?

A. 10 cents is the established fare?

Q. Did the Public Utilities Commission ever require you by order to maintain that fare?

A. Yes; they did. We previously had 5 cents fare between the Bureau of Engraving and Printing and 12th and Pennsylvania Avenue, which was ordered discontinued by the Public Utilities Commission.

Q. Do you recall the order number? Was it No. 236 of April, 1932?

A. That is correct, sir. There was a subsequent order that I think we should refer to also which outlines what intradistrict rights we had. The order of April 18, 1932 is P. U. C. Order No. 1010. The subsequent order is P. U. C. Order No. 1030.

Q. The number I refer to, Mr. Examiner, was the formal case number. It is the same——

A. Same proceedings.

Q. The order No. 1010 in formal case No. 236.

A. That is right.

Q. Mr. Mitchell, have you tabulated the various orders of the various government agencies that affect bus transportation
960 within the past two or three years, so that we could have them in this case in a convenient manner, applying to the bus transportation?

We have made a great many references to the subject, and I think it would be helpful to the Commission and to the parties here for the disposition of the case if the witness would supply or simply read it in the order in which he has the various steps that have been taken by the O. D. T. and others with respect to the subject.

A. Yes; I helped prepare this data.

The tire freeze and rationing took effect in December 1941.

Gasoline rationing was in May 1942; the B and C gasoline coupons were cut from 4 gallons to 3 gallons in November of 1942. The first pleasure driving ban was revoked in January 1943, and an honor system put into effect.

A coupons were cut from 4 to 3 gallons in March of 1943. The second pleasure driving ban, May 1943. The B and C coupons were cut from 3 to 2½ gallons in June 1943. The A coupons were cut from 3 gallons per week to 1½ gallons per week in either May or June 1943.

Q. Now, do these gas rationing and rubber rationing programs have any effect on the passenger traffic handled by your company?

A. Yes, sir. We have been able to feel the effect of these
961 changes in the amount of gasoline available to automobiles in every instance.

Q. Have you any opinion as to what effect it would have should the government suddenly remove the gas rationing and the rubber rationing program?

A. Well, I feel definitely that it would materially affect volume of traffic which we are now doing; to just what extent I don't know, but I feel it would be very substantial.

Q. You mean it would cause a decrease in the traffic?

A. It would cause a decrease in the number of persons transported; yes.

Q. By the way, what would you regard as the peak period of your traffic, insofar as the federal installations in Virginia are concerned?

A. That is the entire morning and afternoon peak?

Q. Yes. What is that? Was it some time this spring?

A. Yes. We hit the peak along about March 1943.

Q. Well, now, what has been the trend of the bus traffic since March 1943?

A. In reference to these installations, it has been a slight decline since March.

Q. Can you state, Mr. Mitchell, what proportion the revenue your company received from passengers carried to and from the Federal installations here involved is to the total revenue of your company, of all passengers, intrastate and interstate?

962 A. Based on the counts which were taken August 4 and 6, it is approximately 15 percent.

Q. Now, there has been a great deal said here as to when these different federal installations were put into use. I suggest you read that into the record, Mr. Mitchell.

A. The Navy Arlington Annex; first employees moved into the building October 21, 1941. The new terminal was operated on the north side of the building on May 4, 1943. Prior to that time we served that building from Columbia Pike.

The Pentagon Building: first employees in the building April 29, 1942. The terminal in the building was operated December 12, 1942.

The Arnold Valley and 14th and Quincy Street lines of our operation were not run through the building until January 2, 1943.

The last link in the roadway which affected the operation of our busses was completed July 4, 1943.

The Army Air Forces Annex at Gravely Point; first employees moved in the building June 6, 1942, and the route was changed to the front of the building, necessitating extra mileage, on October 22, 1942.

I do not have a record of the Washington National Airport, but to the best of my recollection it was opened some time in 1940.

Q. Did you hear the testimony of Mr. Lane concerning

963 increases in cost of materials and wages?

A. Yes, sir.

Q. Does what he says square with your own experience?

A. Yes, sir. There is definitely an increase in all materials that have to be purchased at the present time.

Insofar as the wages are concerned, the contract with our drivers union expired May 18, 1942. We have agreed upon an increase in wages for operators ranging from 5 cents an hour to 12 cents an hour. The agreement has not been approved by the War Labor Board up to the present time, but it is retroactive to May 18, if and when it is approved.

Mr. LANE. Just a moment; you mean 1943. You said '42.

The WITNESS. That is correct; 1943.

Mr. HILL. You testified previously that your cost per bus mile showed upward trend.

The WITNESS. I did.

By Mr. QUIRK:

Q. Did you also hear the testimony of Mr. Lane about the negotiations with the Regional Committee of the O. D. T. and others?

A. Yes, sir.

Q. Concerning fares between these points in Virginia and the District of Columbia?

A. Yes.

Q. Did you participate in those negotiations?

A. I believe I attended each and every one of them.

964 Q. Well, Mr. Lane's testimony about that subject squares with your own experience, does it not?

A. Yes; it does.

Q. You have not anything to add to that?

A. No; I believe Mr. Lane covered the field pretty well.

Mr. QUIRK. That is all I have.

By Mr. QUIRK:

Q. I think you were asked if the restrictions on driving were suddenly eased what effect it would have. Would it not have the same effect ultimately if it were gradually lifted?

A. Well, in the long run I suppose it would. Of course the change would be gradual as to the passengers the same as changes in restrictions were gradual.

Re-cross-examination by Mr. LANE:

Q. Mr. Mitchell, you and predecessor bus companies have been carrying passengers into the District of Columbia for how long a time?

A. According to the records, since 1894.

Q. Are any of those passengers—were any of those passengers, prior to the building of these four installations in Virginia, government employees?

A. A very substantial part of them were.

Q. In other words, the traffic of both the predecessor company and the bus company into Washington during rush hours has always been substantially a large proportion of government
965 employees.

A. That is right.

Q. Employed in what departments of the government?

A. Well, War, Navy and all other departments that have headquarters in Washington.

Q. Those employees coming into Washington, employed in government agencies not located along your bus route were required to get to their places of employment how?

A. By leaving our transportation and selecting any other means of transportation they cared to take, either the lines of the Transit Company or taxicab, or however else they might be able to reach it.

Q. In other words, those passengers that you brought into the District of Columbia who were employed by government agencies elsewhere in the District of Columbia were always required to pay additional transportation charge within the District of Columbia, is that true?

A. That is true.

Q. That has been true with all of these bus lines for how long to your knowledge?

A. To my personal knowledge since 1923.

Q. Prior to—on what date did you get—approximately what date did you get permission to operate over Memorial Bridge, if you remember.

A. I don't remember. It took quite a long time to per-
966 suade the Interior Department to let us use it, but it seems to me like it was along in 1940.

Q. Prior to that time would you assume that you would have any War Department employees coming in over your line who were employed in the Munitions Building on Constitution Avenue?

A. Yes; we definitely did. That is one of the reasons for wanting to operate on the Memorial Bridge.

Q. And prior to your establishing a line upon Constitution Avenue, those employees of the War Department brought into Washington by you had to transfer to either Capital Transit or some other means of transportation within the District of Columbia to get to their employment, did they not?

A. I suppose they did, if they did not walk that distance.

Q. Did the War Department at any time prior to establishing these routes via Memorial Bridge, ask for a reduction in rate for these employees?

A. Not to my knowledge.

Q. And how long had that practice been going on?

A. For many years.

Mr. LANE. That is all on that testimony you have just given is true to the Arlington and Fairfax Company, and the Washington-Virginia companies' past experience, to your knowledge?

The WITNESS. That is right; all three companies.

967 Redirect examination by Mr. WHITTLESEY:

Q. Mr. Mitchell, how much of your time in the past year or year and a half has been devoted to negotiations and conferences concerning the Pentagon business?

A. A very substantial portion of it; at least half.

Q. But the proportion of traffic is only 15 percent, did you say?

A. Yes.

Q. Regarding the government employees working in Virginia in substance you are saying the selection of a residence determines the price of transportation costs; isn't that correct? Is that what you mean?

A. That is usually the result.

By Mr. LANE:

Q. As a matter of fact, Mr. Mitchell, if you had any employee—if you had any passengers who were employees of the Munitions Building, prior to the building of the Pentagon Building, and who are now working in the Pentagon Building, they would have received a reduction in fare, would they not?

A. Yes; I know definitely of cases, many cases, where that is true. Passengers who reside in Alexandria and formerly worked in the Munitions Building with a fare of 15 cents can now ride to the Pentagon Building for 10 cents, and others who were in the 10-cent zone to the Munitions Building are now in the 5-cent zone to the Pentagon Building. That is true also of the Arlington Navy Annex.

968 Q. Well, is it or is it not a fact that employees of the Pentagon Building now residing in Virginia may be paying less for transportation than they formerly paid when they were employed at other installations of the War Department in the District of Columbia?

A. Definitely; many have received deductions in bus transportation for that reason.

Q. And from your knowledge of the conditions you would say that was true regarding other Virginia lines as well as your own?

A. I am not sure. I don't know the rate structure in other lines in Virginia as well as I should. It would seem so.

Q. Prior to the operating of the Memorial Bridge none of the Virginia companies served the Munitions Building or Navy Building on Constitution Avenue.

A. That is true.

Q. Therefore, prior to that time they would all have had to use District means of transportation to get to those points from any of the Virginia companies, isn't that true?

A. I would say so.

Q. Therefore it is fair to assume there has been a decrease in the cost of transportation to the Virginia residents on all lines.

A. That is correct.

By Mr. WHITTLESEY:

969 Q. Now, Mr. Mitchell, as I understand your testimony, it is to the effect that your busses carry government employees in to work in the morning, and they also carry government employees out of the District in the morning.

A. That is true.

Q. Have you ever stopped to consider the situation insofar as that pertains to the desires or the—pardon me—the reasons why some government employees would live some distance from their place of employment who travel across state lines in both directions in order to reach their place of work?

A. Do you say have I made a study to determine why they do that?

Q. Yes.

A. Well, I have not made a particular study, but from general observation I would say it is controlled by more than one thing. It may be a desire to live in a certain place irrespective of where you work. Another would be the inability to secure living quarters in a close proximity to where you work.

Mr. WHITTLESEY. That is all.

Exam. MATTINGLY. You referred to some zone rates. I think you confined your discussion of it to the intrastate rates. How about the interstate rates in the District of Virginia: do you have those on the zone rate?

A. Yes, sir: I believe I mentioned the fact that we have a 10, 15, and 20-cents interstate fare on lines operating from the District into Virginia.

970 I might clarify it for the Belvoir and Mt. Vernon situations a little. Our basic operations on those two lines are from Alexandria to Fort Belvoir or Mt. Vernon. We do at times operate through trips in the District and have tariffs filed on both those lines in the District; in the case of Fort Belvoir the fare is 25 cents interstate and the Mt. Vernon fare is 40 cents interstate.

Exam. MATTINGLY. Can you give the approximate at boundary of your 10-cent zone?

The WITNESS. In miles?

Exam. MATTINGLY. In points and miles both.

The WITNESS. Well, if you had a map in front of you on Russell Road, the intersection of Russell Road and Braddock Road [witness consults map] on the lower right hand side of the map, at the intersection of Braddock Road and Russell Road, a point known as Braddock corner.

Exam. MATTINGLY. That is in the general vicinity of the Ivy Hill Cemetery.

Mr. LANE. That is right.

Mr. QUIRK. Is that correct? Is it in that general vicinity?

The WITNESS. The general vicinity, although it does not—the route that operates directly by Ivy Hill Cemetery, it is on the north side of that, Braddock Road is.

971 The fare is the fare from the District of Columbia 10-cent interstate fare from the District of Columbia terminal at that point for three of our routes, namely the Arlington Ridge Road route, which operates through the Pentagon Building, the Potomac Yard route which operates by way of No. 1 Highway, and the Russell Road route, which operates along No. 1 as far as 20th Street, over 20th Street to Arlington Ridge Road.

The 10-cent fare on the routes that operate over No. 1 Highway all the way into Alexandria is at Barbfoot Lane, which is about two blocks past the Bridge, over the railroad track, leading into Alexandria, off of No. 1 Highway, and correspondingly the 10-cent fare——

Exam. MATTINGLY. Wait a minute. Let me get this.

The WITNESS. Correspondingly, the 10-cent fare by way of the Memorial Highway terminates at Barbfoot Lane, directly opposite the No. 1 termination fare.

On the Columbia Pike line, which is in the center part of the *mpa*, the fare extends to Barcroft and takes in the loop in Barcroft, also takes in the loop to 14th and Quincy Streets on the south side of Columbia Pike, and terminates at the W. and O. D. Railroad tracks crossing Columbia Pike.

Exam. MATTINGLY. Is that on this map?

The WITNESS. Yes, sir.

Mr. LANE. Immediately above the arrow pointing to Baileys Crossroads, if the Examiner please.

Exam. MATTINGLY. Does that complete the boundary?

972 The WITNESS. Of the 10-cent fares as far as I can recall; yes, sir.

Exam. MATTINGLY. Where you go beyond that zone, as I understand it, the zones are 5-cent zones after that.

The WITNESS. Yes; the next zone after that is 15 cents. The majority of the lines only have a 15-cent fare which takes them to the end of their lines, with one exception; the New Alexandria

fare is 20 cents. That is a 5-cent zone from Alexandria to New Alexandria.

Exam. MATTINGLY. Now, you said that your fares for transportation within the District were 10 cents. Is that 10 cents exclusively? Do you have any other kinds of fare? Tokens or anything like that?

The WITNESS. We have no other kinds of fares in the District except a straight 10-cent cash fare.

Exam. MATTINGLY. You referred to some trips that you make I believe to or from the Pentagon Building as a shuttle service.

The WITNESS. No, sir; that was to and from the Arlington Navy Annex from Lincoln Memorial to make that 5-cent connection. We do not operate a shuttle service to the Pentagon.

Exam. MATTINGLY. Would it be possible from your records to get some data as to the results of operations on that shuttle
973 service to the Navy Building except from the rest of your operation?

The WITNESS. Yes, sir. We could determine the number of pieces of equipment involved, the number of miles operated. We could not get the revenue accurately without going back to the manifest and digging it out. We have a count taken by the dispatcher each morning which developed into cash might reflect revenue derived from that operation, but as I stated that is not operated in the same manner in the evening rush hour. It is operated differently.

Exam. MATTINGLY. Aside from that one possible exception, as I understand it, records of your business to and from these government installations and all the rest of your business is intermingled so that from present records you could not segregate one from the other.

The WITNESS. That is correct, sir. We have given considerable thought to how it might be done in arriving at a solution to the problem.

Exam. MATTINGLY. All right.

By Mr. QUIRK:

Q. Mr. Mitchell, now that you have mentioned this shuttle service between the Navy Annex and Lincoln Memorial, isn't it a fact that that was originally established to serve passengers that got on or left your busses at the west side of the Memorial Bridge?

A. No; that shuttle service was not inaugurated for that purpose. The fare——

974 Q. Well, what——

A. The fare was filed in that manner to carry through our system of fares in the District—I mean in our area—when we started operation over Memorial Bridge. That was not a need

for any shuttle service at that time because the movement was all the way into the District. The shuttle service was inaugurated after the opening of the Arlington Navy Annex, when it became necessary to have a number of busses at the Lincoln Memorial to meet the Capital Transit busses to carry the people to that building.

Q. Well, now, during the time that this shuttle service was in operation or has been in operation, do you actually assign particular busses used exclusively in hauling passengers between the Lincoln Memorial and the Navy Annex?

A. We have six busses scheduled to perform that service. There is no six specific busses, but there are six busses to be used in that service each morning.

Q. Is that a rush hour service?

A. Strictly rush hour from 6:45 until 8:30.

Q. What do you do with respect to that service in the evening?

A. In the evening the busses are located at the Navy Annex to bring the employees into the District. The majority of them are designated for 12th and Pennsylvania Avenue, and the balance are designed for the Lincoln Memorial, and those
975 designated for the Lincoln Memorial stop there and the dispatcher then assigns a route for them to return to Virginia over any of the various routes that we operate.

Q. How do you regulate the exaction of the 5-cent fares when you go from the Navy Annex in the evening; say those employees would be going to 12th and Constitution Avenue or some point beyond Lincoln Memorial, can you tell which is subject to the 5-cent tariff and which is subject to the 10-cent fare?

A. Well, we had considerable difficulty in arriving at the solution of that, but found it to be to collect only 5 cents at the building, and another 5 cents as they left the bus anywhere past the Lincoln Memorial.

Mr. QUIRK. That is all.

Exam. MATTINGLY. How do you work it the other way, when going to the Navy building in the morning? Do those busses stop at the Navy building, all of them?

The WITNESS. Well, the regular routed busses stop there to discharge passengers and continue on their route. That is controlled by the fact that the driver knows, leaving 12th and Pennsylvania Avenue, he receives nothing less than 10-cent fares until he arrives at the Lincoln Memorial. From that point on the fare is 5 cents to the Navy Annex. He has no difficulty accepting his fares.

Exam. MATTINGLY. Do some of those busses keep on be-
976 yond the Navy Annex?

The WITNESS. The regular routed busses, out Columbia Pike, operate via the Navy Building.

Exam. MATTINGLY. Suppose somebody gets on at Lincoln Memorial and pays a nickel, and does not get off at the Navy Building?

The WITNESS. That is a problem for the driver. He is supposed to know who pays what.

By Col. BARRON:

Q. What is the length of your 10-cent zone?

A. The length of the 10-cent zones?

Q. Yes.

A. Particularly?

Q. Particularly over the Alexandria route.

A. In mileage to Braddock Canyon via the Arlington Ridge Road route, which operates to the Pentagon Building, it is 7.7 miles.

Exam. MATTINGLY. Where is that to?

The WITNESS. To the Braddock Canyon; that is Russell Road and Braddock Road.

By Mr. QUIRK:

Q. Where is the seven odd miles from?

A. 12th and Pennsylvania Avenue and Braddock Canyon, which is the end of the 10-cent zone from there in Virginia.

On the Columbia Pike line, the 10-cent zone fare extends to 14th and Quincy Streets, which is 8 miles even, extends to Barcroft,
977 which is 7.6 miles, and the Old Dominion Railroad tracks on Columbia Pike is 7.1 miles.

All of those mileages have been increased since the installation of these buildings. They were considerably less when the 10-cent fares were established.

Exam. MATTINGLY. Did you fix the other route over the Memorial Highway and U. S. No. 1?

The WITNESS. No, sir; I did not. I might say further that to Braddock Canyon via the Potomac Yards route, which is the No. 1 highway down there to where it turns off at Hume Avenue by the railroad yards, the mileage to Braddock Canyon over that route is only 6.6 miles. The mileage of the 10-cent zone at Barbfoot Lane on U. S. No. 1 is 6.6 miles, and to Barbfoot Lane on Memorial Highway, which operates via the Highway Bridge and the Airport, it is 6.6 miles. That route via the Memorial Bridge is 8.2 miles.

By Col. BARRON:

Q. When did you say you had your peak of traffic on this operation?

A. The over-all operation?

Q. Yes.

A. We consider our morning rush period—is that what you refer to?

Q. Yes; I mean say in the last year when has your traffic been at the highest peak?

A. Well, I don't know whether, as an over-all proposition, whether we have reached the highest peak or not. I said that
978 in March of this year we reached a peak insofar as transportation of these particular installations is concerned, due to construction in our area. Our business is increasing weekly, daily.

Q. It still is?

A. It still is. As a matter of fact, there are some 2,500 apartment units to be opened within the next 60 days in our area.

Q. You think the peak for the last 12 months roughly to the installations would be in the month of March of this year?

A. That is my general recollection; yes, sir. I believe it has decreased some since that time.

Q. And when did gas rationing start?

A. The first gasoline rationing was in May 1942.

Q. I see.

A. But I might say that the efforts on the part of the War and Navy Departments to promote share-the-car riders, plus the reduction in the number of workers in these buildings, has been a contributing factor to the reduction in the number of bus rides.

At the present time some 1,800 less employees in the Army Air Forces then there were this spring, according to the information I am given by the War Department.

By Mr. LANE:

Q. When was the peak of the population of the Pentagon reached, do you know?

979 A. I don't know definitely. I have been told that it was reached in the spring of this year and has decreased since that time. I don't know that to be a fact.

By Col. BARRON:

Q. I would like for you to estimate—give exact figures if you can—what the wage increase would amount to on your monthly pay rolls if it is approved for all the wage increases that you have discussed.

A. I don't have that figure available. I might ask if the auditor knows, who is here and may have it. I failed to mention also when I was referring to the wage increase, that a like increase will be granted all employees if the contract of the union for the bus operators is approved by the WLB.

Generally a 5 cents per hour increase in hourly wages, carrying through the maintenance department and the office.

Q. Does the auditor have that figure?

Mr. QUIRK. We can get that; yes, sir. You want that expressed in dollars and cents on a monthly basis.

Col. BARRON. Yes.

Mr. QUIRK. What the wage increase would aggregate when and if it is applied.

Col. BARRON. Yes, sir.

Mr. QUIRK. That is just a matter of doing some figuring. Mr. Snyder, we can get that, can't we?

Mr. SNYDER. Yes.

Exam. MATTINGLY. Any other questions from this witness
980 at this time?

(No response.)

Exam. MATTINGLY. That seems to be all.

(Witness excused.)

Exam. MATTINGLY. We will take a short recess.

(Short recess.)

Exam. MATTINGLY. All right, gentlemen.

Col. BARRON. Can we have Mr. Heberle back, please?

Exam. MATTINGLY. Will you please take the stand, Mr. Heberle?

J. E. HEBERLE recalled and testified as follows:

Direct examination (cont.) by Capt. DAVIS:

Q. Mr. Heberle, will you refer again please to Exhibit 89, being the attempted allocation to the Pentagon operation.

A. Yes, sir.

Q. I direct your attention to the first item on there, being the passenger revenue and the amount of $179,000, approximately. Is that the actual amount received from the Pentagon operation?

A. That is correct. Those are fares collected for the Pentagon ride.

Q. Now, is each run on the Pentagon line recorded separately?

A. Well, during the—at the present time and for some
981 time past, possibly during this whole time, the collection of fares for the Pentagon ride is made at the Pentagon Building.

Q. Is that for both ways?

A. Yes, sir.

Q. And so that there is no intermingling of receipts from that line with any of the other lines?

A. No.

Q. And the drivers themselves don't handle any of the revenue for those lines?

A. Under this system so far as the Pentagon ride is concerned the answer is that the drivers do not handle revenue.

Q. Now, supposing the passenger gets on the Q–2 bus down there at 7th and Constitution and has no pass or transfer. What does he pay?

A. I would have to find out the answer to that or else that question would have to be asked from another witness because I am not familiar with the fare on the way to the Pentagon.

Out of the Pentagon Building on Q–2 I know what the arrangement is, but whether it is a reverse on the in-bound—in the out-bound direction on Q–2, there are two areas at the Pentagon Building, two fare prepayment areas, and one is for the 5-cent fare and the other is for the District fare.

Now, there is provision made in the District fare for a pass
982 gate, a weekly pass gate. Outside of that the weekly fare collection provides one of turnstiles where it requires the coin or token to pass through the turnstile.

Q. Plus 5 cents?

A. There is a 5-cent area for the 5-cent Virginia fare and it takes 5 cents to go into that area. That is for all passengers.

Then from that to go to the Q–2 you must still go through a second fare collecting area and on that you would have a dime fare, a token fare or a weekly pass. The first two fares are by means of a turnstile and the third is controlled by supervised operations of the pass.

So that the out-bound from the Pentagon—there is no question but what fares for both District or Pentagon riders are collected at the Pentagon Building, and it is my general impression that in-bound to the Pentagon the same arrangement is made, but I can not be quite so definite there.

Q. Well, now, confining yourself for the moment to the out-bound operation from the Pentagon to the District on the Q–2 line to which you referred——

A. Yes, sir.

Q. Is the revenue from that, that is from those token or pass or dimes, included in this figure of $179,000?

A. It is not.

Q. Do you know how much that figure amounts to?

A. No—you mean the revenue; the token revenue or Dis-
983 trict fare revenue?

Q. Yes.

A. No; I do not.

Q. Do you know how many passengers ride that line who do not make any substantial trip on your lines after they reach 7th and Constitution?

A. There are no passengers who were traced in there journeys over any part of our route. That process, as I explained in my opinion, is impracticable or impossible to follow.

Q. You don't know then how much additional revenue there is received from that Q–2 line in addition to this $179,000?

A. There is no revenue received for my interpretation of the ride on Q–2 beyond the revenue shown here, although that statement is based on the fact that you do have to pay the District fare with a 5-cent charge if you ride on Q–2.

But the assumption is that those passengers who ride on that do desire to take the District ride, and that when they prepay their fare for the Pentagon 5-cent ride, and the District ride, it is just a prepayment at one time of the two fares that would be normally paid.

Q. Mr. Heberle——

Capt. DAVIS. Mr. Reporter, will you read the question? I think the answer is not responsive.

The WITNESS. Sorry.

(Pending question read.)

984 The WITNESS. My understanding is that this is the complete revenue of the Q–2 line and the R–2 line. It does not represent all of the money that is collected at the Pentagon on these lines, but it is my understanding that this is the total revenue for both the Q–2 and R–2 lines on the Pentagon service.

By Capt. DAVIS:

Q. If a passenger got on that Q–2 line at 7th and Constitution, would you let him ride on that for 5 cents from there to the Pentagon?

A. He would ride for a district fare, and a Pentagon fare, that is correct.

Q. In other words, it would cost him either 15 cents or 5 cents plus a token.

A. That is correct.

Q. Or 5 cents plus the use of the weekly pass.

A. That is right.

Now, I will say this, going back to your question, that if there are any fares paid by persons who arrive at the Pentagon, over and above the 5 cents and by any persons who do not take any ride on the Capital Transit lines outside of that Pentagon line, such fares are not included in this, and I do not know if they exist or if so, to what extent they exist.

Q. You did not attempt to find that out before you prepared this information?

A. It could not be found out.

Q. Now, you said that you personally were not familiar
985 with the mechanics in checking the fares going from the District to the Pentagon. Can you tell us who would be able to testify on that?

A. Well, I could check on it readily or if you want to wait until Mr. Locke comes on the stand, you can ask him.

Normally it is a procedure that I would be familiar with, but I just don't happen to be at the moment. Mr. Locke has been sworn. He could be asked from the floor if you desire.

Capt. DAVIS. Can we go off the record?

Exam. MATTINGLY. Off the record.

(Discussion off the record.)

By Capt. DAVIS:

Q. Are you prepared to answer that now, Mr. Heberle?

A. Yes, sir. Passengers riding to Pentagon on Q–2 pay their fare on the bus, pay their District fare, the transfer or they show the pass, or if there be any that pay any other sort of fare, they pay when they board the bus bound for Pentagon and when they reach Pentagon they go through the 5-cent post payment area and pay the 5 cents there.

Q. Now, how many of the passengers getting on that Q–2 bus, if you know, pay tokens or dimes as against transfers or passes?

A. I have no record, no information.

Q. You did not check to see whether any people had before
986 you made up this exhibit?

A. I did not.

Mr. DUNLOP. This exhibit does not show them, does it?

The WITNESS. It does not.

By Capt. DAVIS:

Q. Mr. Heberle, will you now refer to the figure for miles operated at the bottom of Exhibit 89, being in No. 427,663?

A. Yes, sir.

Q. Will you tell us how that was computed or determined?

A. It was based first on miles scheduled for the Pentagon line, and then the schedules are examined by a mileage clerk. Any changes, additions, or deductions are made from it, and the mileage for the day computed. Those miles for the day are aggregated into the miles for the month. The miles for the month are aggregated into miles for seven months here. Does that answer your question?

Q. Well, now, is that based on the speedometer readings of the busses used for the Pentagon each day or is it based upon the schedules?

A. It is based on trips, on trips and not on the mechanical devices.

Q. In other words, you check the distance once and then you multiply that by the number of trips.

A. Yes; distance or distances.

Q. Does this mileage contain an allowance for travel
987 between the garage and either terminal?

A. Yes, it does; where that mileage is required.

Mr. DUNLOP. For the Pentagon service, you mean.

The WITNESS. Yes. You see, some of these busses are pulled off lines that finish somewhere near where the demand is for service on the Pentagon, and there are at least two busses in the month of July that I have testified are specifically used on Pentagon that came out of the garage. Nought mileage from the garage to Pentagon in this latter case would be charged to the Pentagon line. In the first case with those busses that are pulled off adjoining lines, any mileage would be the miles from that route to the Pentagon.

Now, when the bus—many of these busses, as has been testified, lay over at the Pentagon from the morning rush hour until evening. Well, of course, there is not any run-off mileage on those. The busses are stored at the Pentagon. So there is no run-off mileage after the morning rush.

Now, when the busses are—busses have finished with their work, whether it be morning or evening, and exclusive of these busses that I have referred to as having been stored, if the bus goes to the garage after it leaves Pentagon, the mileage to the garage is charged. If the bus on the other hand is used on another line, there is no charge made to Pentagon for the operation of the bus from the end of the Pentagon route to the new line.

988 In other words, the bus that calls for—that is one term that has been used—the line that calls for a bus takes over the miles of that bus from where it picks it up, where it gets the bus. If it happens to be on an adjoining line and Pentagon is calling for the bus, it will take the bus mileage over to Pentagon. If the bus is pulled out specifically for Pentagon out of a garage, it will have mileage in both directions.

Under the plan that was contemplated here, where we had some theoretical figures requiring some 60-odd busses that were separate service, we would have for each one of the busses a round trip between Pentagon and the garage for such busses.

Q. Well, then, the extent to which this travel between the garage or the other lines would be added on would depend of course on how you happened to move these busses to other lines and would be within your control, would it not?

A. No—you say within our control? No; we can't throw the busses around as we would like. It is possibly in the control of the schedule. This present method that we are using of using

on the Pentagon line busses that have been used on another line provides first the most economical use of busses. It requires fewer busses than if we had busses specifically allocated to Pentagon; that is No. 1.

No. 2, it takes fewer bus miles charged to Pentagon to
989 operate under that present condition than if we had busses specifically assigned.

Q. Do you know what proportion of the 470,000 miles is actual travel to and from the Pentagon and what proportion is to and from the terminals to the garage?

A. No, I do not. No, I do not. Now, that is—we keep figures of revenue and nonrevenue miles, but that particular figure that you speak of, we do not have it, because some of the—the bus goes to Pentagon loaded and comes back light, and some of those trips from the Pentagon to the city are included in the nonrevenue miles, and I just can't strip down—I can't find out anything about mileage off that Pentagon route; sorry.

Q. Now, do you know what proportion of this, then, would be revenue and what proportion would be nonrevenue miles?

A. I do have with the interpretation that some of the direct revenue miles of Pentagon are included in the nonrevenue miles. I do not have that here, but it is a figure that can be obtained; at least, I do not think I have it here. Let me take a look, please.

Q. We would be glad to have you supply it for us with the qualifications mentioned.

A. All right, Captain. It will just save me looking now. It is the revenue miles is not a significant figure with respect to
990 cost, because that costs as much to move a bus in nonrevenue service as it does in revenue service, for a moment forgetting any consideration of cost of added load of passengers.

Capt. DAVIS. I show you here a document which I will ask the reporter to mark as "Exhibit No. 98."

(Exhibit No. 98, Witness Heberle, marked for identification.)

By Capt. DAVIS:

Q. Mr. Heberle, do the break-downs of items on the left-hand columns accord with the classification which you use in your report to the Public Utilities Commission?

A. Without examining them in detail, they appear to.

Q. Now, you did not use, apparently, the same break-down in making the statement in Exhibit 89—just a minute.

A. Is that question complete?

Q. No. Can you tell us whether the information shown in the first column, which is taken as I understand it from your last monthly report, is the information which you based the allocated figures in Exhibit 89 on?

A. In the first place, the statement—the report that we make to the Public Utilities Commission follows Exhibit 89 and does not in a minor particular follow this Exhibit No. 98. Because Exhibit No. 98 starts out here with operating expenses, and below that "Superintendents of plant and equipment," whereas the report that goes to the Commission shows, in place of operating ex-
991 penses, maintenance of plant and equipment, and if you refer to my Exhibit No. 89, you will find that I start out with maintenance of plant and equipment, a very minor thing, but you said that——

Q. Yes, sir.

A. —— you seem to indicate that your Exhibit 98 followed the reports to the Commission, whereas my exhibit did not. I just mention that.

Q. Well, this shows in somewhat more detail the different items, I understand.

A. That is correct; yes, sir.

Q. Now, does the designation "operating expenses" on Exhibit 98——

Mr. PRETTYMAN. Capt. Davis, does this table you gave Mr. Heberle purport to be for the entire system or is that the Pentagon operation?

Capt. DAVIS. That is a break-down of the entire operations as I understand it, taken from a report to the Public Utilities Commission.

Mr. PRETTYMAN. Is it just busses?

Capt. DAVIS. Yes, sir.

Mr. PRETTYMAN. It is the over-all figures?

Capt. DAVIS. Yes, sir. I will be glad to have Mr. Kosh explain how that is made up if you think it is necessary.

Mr. PRETTYMAN. I think it is totally unnecessary because the exhibit comes under the general objection, Mr. Examiner;
992 it is over-all figures.

Exam. MATTINGLY. It will be accepted with the same understanding that we have had for other exhibits. That is as a profer which is objected to.

Mr. QUIRK. I would like to suggest, Mr. Examiner, that this is what I had in mind on the other day when I said we were spending a lot of time on matters of no importance here.

Now, what purpose could be served by asking this witness about all these matters which concern the over-all picture in connection with an exhibit which attempts to break down a cost for a particular service?

Capt. DAVIS. Well, as I understand it, your Honor, this exhibit 89 purports to be an allocation which in large part is based upon the general overheads and allocations of the system operation, so

that we thought in that connection it would be helpful to have in here whatever basic figures there were on which this might be based and this particular exhibit also gives a little more detailed breakdown of those figures.

Mr. QUIRK. It seems to me, Mr. Examiner, it is confusing rather than helpful. There is just no connection between the two things, except perhaps that names of the accounts.

Exam. MATTINGLY. We will go ahead with the examination.

By Capt. DAVIS:

Q. Mr. Heberle, does the figure for operating expenses in your report to the Public Utilities Commission and as reflected
993 in Exhibit 98 correspond to the item "Maintenance of plant and equipment" shown in Exhibit 89?

Mr. LANE. May I have that question again, please? I did not understand it?

(Question read.)

The WITNESS. The same is shown for "Superintendents of plant and equipment" shown on Exhibit 98 is the same as shown in our report to the Public Utilities Commission for the first seven months of 1943.

Mr. DUNLOP. For the entire system?

The WITNESS. For the bus system; yes, sir.

By Capt. DAVIS:

Q. Well, now, does the whole classification "Operating expenses" shown on Exhibit 98, which includes eight different items, correspond to the item "Maintenance of plant and equipment" on Exhibit 89?

Mr. WHITTLESEY. I object to this type of cross examination because it is decidedly improper and it can be easily determined that it is improper by asking the witness one question; did he prepare this exhibit or did he ever see it before, or did he use it in any of these computations or calculations prepared up to now. They have thrown a strange exhibit at him and are asking him out of a clear sky to identify these figures.

Now, it may well be that he can; I don't know. But certainly it is an improper way to introduce an exhibit which I understand some other witness has prepared and which will be
994 introduced by another witness at a subsequent time. I think it is most improper.

Mr. PRETTYMAN. I might add to that, Mr. Examiner, it is an interminable waste of time to toss a set of figures totally unknown to a witness and prepared by another person and start at the top and ask him to go through them and identify them. We would be here forever if somebody prepared it. Whoever prepared it ought to at least explain what it is.

Capt. DAVIS. I understand this Exhibit 98, Mr. Examiner, is merely a copy of the principal items in the report to the Public Utilities Commission.

Exam. MATTINGLY. Let us ask the witness.

Mr. Heberle, are you familiar with the figures on here so that you can discuss them intelligently; would you rather have the witness who prepared this thing get on and explain it? Are the figures on here figures that you are entirely familiar with?

The WITNESS. If they were to make one or two changes in this exhibit that they can make right here in the record, then we could save a lot of time referring to it, and I think without a great deal of trouble, if it is desired, I can identify it.

Exam. MATTINGLY. Let us get off the record a minute.

(Discussion off the record.)

Exam. MATTINGLY. On the record.

995 Col. BARRON. May we take Mr. Heberle off the stand for a moment and put Mr. Kosh on to identify the exhibit?

Exam. MATTINGLY. All right.

(Witness excused.)

D. E. KOSH was called as a witness and testified as follows:

Direct examination by Col. BARRON:

Q. Mr. Kosh, you have before you what has been marked for identification as Exhibit 98.

A. Yes, sir.

Q. Did you prepare that exhibit?

A. Well, I had somebody copy this from the report to the PUC. I was told by the chief accountant of the Public Utilities Commission of the District that the bus reports were in a consistence with the account, of the account promulgated by the Commission.

Mr. PRETTYMAN. Did you ever see the reports of the Capital Transit Company for the seven months?

A. I did.

By Mr. PRETTYMAN:

Q. Did you take the figures off that?

A. I did not take them off. I did identify the way I wanted it and had someone copy them.

Q. Did you check them afterwards?

A. No; I did not personally check those figures.

May I continue with the answer to Col. Barron?

996 Now, I notice that these figures which have been copied off which I requested follow in title exactly those reported by the NARUC with the corrections which Mr. Heberle just made.

That first title should not be operating expense; it should be maintenace of plant and equipment. Otherwise this corresponds to the NARUC report.

Exam. MATTINGLY. I think we ought to keep the record straight. The correction which you refer to was made off the record and does not appear.

The WITNESS. All right. That first heading "Operating expenses" is in error, and should be maintenance of plant and equipment to correspond to the NARUC system.

The purpose of doing this was to check Exhibit 89. Exhibit 89 has implicit breakdowns. In other words, the breakdown on Exhibit 89 is not as detailed as these figures taken from the PUC report. The purpose of taking this down is to see if we could not combine the figures on this 98 exhibit, and see if we could check them against the figures on Exhibit 89.

There is only one additional set of facts on Exhibit 98 which does not appears in the PUC report.

Mr. PRETTYMAN. Is that—what is that again?

The WITNESS. There is one set of figures on Exhibit 98 which does not appear on a PUC report. We took each one of the dollar figures which do appear on the PUC report.

997 By Mr. PRETTYMAN:

Q. Well, now, none of the figures in the second column appear.

A. I was just about to explain that. We took each of the dollar amount figures which do appear in the report and divided them by the total bus miles for the first seven months which Mr. Heberle gave into the record a few days ago. That is the second column of figures dividing the amount of each operating expense by the bus miles operated.

Then the third and fourth columns are merely running subtotals of the first two columns. In other words, the 815,602 is the sum of the expenses listed on the "Maintenance of plant and equipment." The $905,272 is the expense of the figure 1,061,000, the sum from the top down to where this figure is given, so when you come down to the bottom of the third column you have exactly the same sum that you have at the sum of the first column, and the same for the second and fourth.

I might also point out that I could in very many cases identify the expense items listed on Mr. Heberle's Exhibit 89 by combining certain of these expense items here. In certain instances I could not. And it was for the purpose of clarifying the break-down of Exhibit 89 that this was prepared. I do not advocate this as a method of allocation. In fact, I don't allocate any method of allocation. This is merely to show that the finest details

998 I had of the subsidiary data that went to make up Exhibit 89.

If you want me to identify the cross—how I could identify certain exhibits from 98 to 89, I would be glad to. I would also be able to say where I continue, the items applied to Exhibit 89, maintenance of plant and equipment correspond almost exactly with similarly titled——

Mr. PRETTYMAN. I am not asking you questions.

The WITNESS. The items listed in maintenance of plant and equipment in 98 correspond almost exactly with those on 89. I noticed there is a difference of 3/100ths of a cent. On Exhibit 89 that cost comes out to 5.30; on Exhibit 98 it comes out to 527. Since both these are a system for bus mile basis, I can't explain the difference. They should be exactly the same.

In the second group entitled operating garage expenses, that checks exactly with operating garage expenses in the other exhibit down to the nearest hundredth of a cent on Exhibit 89. It is 547 on Exhibit 98; carried to two decimal places it would come out exactly to 547.

The group of expenses listed on Exhibit 89 entitled superintendence of transportation, that obviously to my mind at least is an error in title. Obviously Exhibit 89 could not mean to imply that bus operators wages are part of a general group called superintendence of transportation.

From the NARUC system that heading should be just
999 transportation. That is not a material difference. I just point out the difference of opinion. I could not identify the item on Exhibit 89 called operations on the detail as I got it from the PUC report. I could not identify schedules and traffic from 89 to 98.

Presumably it is in 98 some place, but I could not find just where. Bus operators wages presumably allocated on a direct method, I could not find the exact counterpart in dollars and cents.

I do find it in the title where fare collectors, Pentagon, are included in the system of expenses. I don't know where training is included in the estimate; I don't know.

Road expenses are exactly identical by title and amount one from the other.

Administrative, general expenses, agree except for one item; the amount indicated for rent of equipment is different. It is considerably higher in 89 than the other on the system.

By Mr. PRETTYMAN:

Q. Where is that?

A. Rent of equipment under general administrative expenses in 89.

Although it has its counterpart on the other exhibit, the per bus-mile figure is not the same.

Depreciation and taxes, I could identify expenses, but I could not identify amounts. In other words, the charge per bus-
1000 mile for depreciation on the Pentagon as shown on Exhibit 89 is not the same as on the system. Similarly for taxes, and that was the whole purpose of it.

I could not understand on Exhibit 89 certain of these methods of allocation, and it was for the purpose of clarifying these methods that this exhibit was prepared.

Q. What did you include in bus taxes?

A. The amount shown here at the bottom; taxes. I did not make up this thing from the books of the company. I just got these figures from the reports to the P. U. C.

Q. Well, what is in bus taxes?

A. I presume it is operating taxes.

Q. But you don't know?

A. Well, I could probably get you a breakdown. I don't know offhand the taxes. There are some eight, nine or ten items, I think. All taxes outside of income taxes in general. License taxes; franchise taxes.

Q. But you don't know exactly?

A. No; I could get that from the books if you want it.

Capt. DAVIS. That is all at this time to explain this exhibit. We would like to go on with Mr. Heberle.

The WITNESS. Just one thing. It was my understanding that the figures which we used to prepare this were exactly the figures used to prepare this, and I tried to just get——

Exam. MATTINGLY. What do you mean by this and this?

The WITNESS. It would be Exhibits 89 and 98.

1091 Exam. MATTINGLY. Have you any questions of Mr. Kosh?

Mr. PRETTYMAN. I may have some questions later, if your Honor please, but up to now the witness testified somebody else took some figures off the report. He has made up this set of figures and somebody else has done the division.

The WITNESS. I did that.

Exam. MATTINGLY. Did you do the computing?

The WITNESS. I did personally.

Exam. MATTINGLY. All you did not do was do the copying.

The WITNESS. That is exactly right, and I pointed out specifically what I wanted copied.

Mr. PRETTYMAN. He said he does not know in these various items, he does not identify what the tax is so the exhibit hangs right in midair as far as I am concerned. I do not know what connection it has with anything up to now.

The WITNESS. As I tried to explain at the beginning, Mr. Examiner, the only purpose of this was not to sell a method of allocation but was merely to get the method of allocation used in this exhibit, and what methods of allocation were used in it. The purpose was to see the details of allocation on Exhibit 89.

Mr. DUNLOP. You say you could not find it out from the exhibit.

The WITNESS. No.

Mr. DUNLOP. You could not find it out from these figures.

1002 you are putting in now?

Mr. HILL. Where are we helped if we can't find out?

The WITNESS. Well, the purpose was to use this and perhaps Mr. Heberle could identify it.

Mr. HILL. Was it to impugn 89?

The WITNESS. It was not to impugn anything. It was to give these figures to Mr. Heberle, which were detailed figures, and he could identify which detail he combined to get these figures.

Mr. PRETTYMAN. That clarifies the situation. Let us hand these figures to Mr. Heberle. Let him check them and some time or other he will come back and explain them.

The WITNESS. All right.

Exam. MATTINGLY. I think that is a very good plan; let us do it that way.

Mr. WHITTLESEY. May I ask Mr. Kosh a question?

Did you say you did not include all of the figures?

The WITNESS. I included all of the figures under operating expenses, of course.

Col. BARRON. Our main purpose, of course, in this method of approach is to get enough information.

Exam. MATTINGLY. Well, that is understood, that Mr. Heberle will compare Exhibit 98 with his Exhibit 89 and make such comments as he desires to make on that later, after he has had time to look at it.

1003 Col. BARRON. Yes, sir. We are trying to lay a basis both by his testimony and by Mr. Heberle's cross-examination to attack any allocated figures on this exhibit that we think are unjustified, and we have got to know what happened a little bit more before we can make that kind of a criticism that we would like to make.

Exam. MATTINGLY. Well, the arrangement that I have just mentioned will take care of the situation, will it not?

Col. BARRON. I just wondered if Mr. Heberle would be in position this afternoon to make a statement?

Mr. PRETTYMAN. I can't tell until he examines the figures.

Exam. MATTINGLY. Well, if he can, all right; if he can't, he will do it later.

Mr. WHITTLESEY. I might comment, Mr. Examiner, that that is most unusual to put the exhibit on through this witness.

Exam. MATTINGLY. If you try to enumerate all the unusual things that happened in this proceeding, it will take a long time. Let us not go into that.

Capt. DAVIS. It is the desire to expedite the proceedings to use this instead of the report; it is the same thing.

Exam. MATTINGLY. Do you have any more witnesses?

Col. BARRON. We will have another witness after lunch. Could we recess now?

Mr. LANE. I thought we were not going to ask any more
1004 postponements.

Col. BARRON. We are not asking for a postponement.

Exam. MATTINGLY. Suppose we suspend until 1:45.

Mr. PRETTYMAN. Now, Mr. Examiner, there might not be any delay, but after you put this one more witness on, are you then through? Is that the end of your case?

Col. BARRON. It will be the end of that, providing Mr. Kosh is—he has got a staff at work now preparing for some criticism of this Exhibit 89, and we hope that that will ready this afternoon. We have been working over the week-end and worked all day yesterday.

Exam. MATTINGLY. Let the record show that we suspend until 1:45.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 1:45 o'clock p. m., the same day.)

1005 AFTERNOON SESSION—1:45 P. M.

Exam. MATTINGLY. What is your pleasure, gentlemen?

Col. BARRON. I understand Mr. Heberle will be busy on those figures for about 15 minutes, and we can use Major Ristrop on a few points we want to cover.

Exam. MATTINGLY. Very well.

Major PAUL L. RISTROP was recalled and testified as follows:

Direct Examination (continued) by CAPT. DAVIS:

Q. Major Ristrop, I am not sure whether in connection with your earlier testimony you had occasion to state anything about your background of experience in the transportation field, and in view of the fact that you are very eminently qualified in this field, I think it might be helpful for us if you would state for the record at this time a little bit about your experience prior to the time you went into the Army, without going into elaborate detail.

A. I first started work with the transit company in January of 1931. That was with the New Orleans Public Service. I worked with them until June of 1933.

During that time I was employed in the then schedule department connected primarily with research work, the abandonment of lines, the starting of other lines, schedule work, running time, preparation of schedules, and certain other statistical and traffic investigations.

1006 Subsequent to that I took a postgraduate course in traffic at Harvard, and in the meantime had been employed by the City of New Orleans as traffic engineer for the city with the Department of Public Safety.

Later on I accepted a position here in Washington with the National Headquarters of the then W. P. A., in charge of traffic projects, surveys, transportation studies, and so forth, to pass on the various proposed projects as to their soundness, as to methods employed and the general value of the work to be done, and perhaps the valuation of what would be accomplished by it, whether it would be worthwhile or not.

In response to a call from my old company, I went back to work with them as traffic engineer.

Mr. QUIRK. How about sprinkling a few dates in there, please?

The WITNESS. Any dates you wish, sir.

Traffic engineer of the City of New Orleans from—I don't remember the exact dates, but in 1936, the fall of 1935; held that position until January of 1939 with time out for this postgraduate course.

Then from January 18, if I remember correctly, 1939, to September of 1939 I was here in Washington with the W. P. A. and from October 1939 to the latter part of October 1941 with the New Orleans Public Service.

From October of 1941—let's see whether it was '41—no,
1007 it was from October 1939, to October 1940, and from October 1940, until the present time with the Army.

By Capt. DAVIS:

Q. In the course of your duties with the New Orleans Public Service Company, and in the course of your studies elsewhere in your governmental service and your Army service, you have had a great deal of occasion to study the operations of bus companies?

A. Yes, I did.

Q. With particular reference to their traffic and physical operations, but with some attention to the financial aspects also, insofar as they affect operations?

A. With respect to it, yes, sir; I would say yes to that.

Q. Now, Major Ristrop, you are generally familiar with the operations of the Capital Transit Company, and particularly with these two so-called Pentagon lines, are you not?

A. Yes, I am.

Q. And are you generally familiar with the rush-hour services operated by the Capital Transit Company within the District of Columbia without knowing the detail of all the lines?

A. I am familiar with them in a general way, sir.

Q. And would you say that the operations of this Pentagon—these two Pentagon services are very different from the operations of all the other rush-hour services conducted by Capital Transit Company?

1008 A. If my understanding is correct, the Capital Transit Company now operates some service which is exclusively rush-hour service. It is my further understanding that at least a part of those busses are returned to the end of the route by the most practicable means without carrying any load, so that they can at the other end of the line pick up their load again, and in the respect that it is a rush-hour service, and that at least a portion of it is one-way haul, I would say that in those respects they would be comparable, in my estimation of it.

Q. And is it your opinion that to the extent that costs of a rush-hour service might be increased by using the type of allocation which has been used in preparing Exhibit 89, that similar increases in cost would show up for any other rush-hour services?

Mr. WHITTLESEY. Are you asking him or telling him?

Mr. PRETTYMAN. I would like to say that——

Mr. QUIRK. We might ask from whom the Commission wants an opinion on a fact like that.

Capt. DAVIS. We have had a lot of other opinions here.

Mr. QUIRK. You have given most of them, but in what way is the Commission assisted by having a man express an opinion on whether a fact exists.

Capt. DAVIS. Well, a lot of so-called facts in this Exhibit

1009 89 as we see it are purely opinions and speculations, and surmises, and we would like this witness to express his opinion as to whether the same kind of a surmise might not be made as to any other rush-hour operation showing an equivalent, if not greater, loss as to other rush-hour operations.

Mr. PRETTYMAN. I think I might specify as to what are surmises.

Capt. DAVIS. I think the record speaks for itself.

Mr. PRETTYMAN. I think the record shows facts.

Mr. HILL. First the witness ought to be permitted to give his qualifications as a matter of courtesy.

Capt. DAVIS. No objection to that.

Mr. QUIRK. In the first place, no one has a right to give an opinion on a subject of this kind unless the Court or Commission thinks that the question is so involved and so complicated that they can't understand without an opinion of the expert.

Now, the opinion sought here is not one which is so involved. It is a question of what are the facts. I am merely suggesting that if this gentleman gave opinion for three days on that subject, you would not be helped at all by it.

Exam. MATTINGLY. What is the question there again, please?

(Pending question read.)

Mr. QUIRK. You see, Mr. Examiner.

1010 Exam. MATTINGLY. Well, we need not argue it any more.

I think if the gentlemen can point out any similarities or services, just point out the facts, but don't just make a shotgun statement as to whether or not it will be the case.

Capt. DAVIS. We will withdraw that question.

By Capt. DAVIS:

Q. Let me ask you this, Major: Are there substantial similarities in your opinion between the rush hour services operation to the Pentagon and the other rush hour services operated by this company?

Mr. QUIRK. Now, just a minute. That just calls for a conclusion. If there are similarities, he ought to state what they are; not just conclude what they are.

Exam. MATTINGLY. I agree with you.

Mr. LANE. Capt. Davis should ask the question and not testify; he is giving the answer to the witness in every question.

Exam. MATTINGLY. If the witness can point out another operation similar to Capital Transit that is similar to the one down here, he can do it.

Capt. DAVIS. Certainly you will have him available for cross.

Exam. MATTINGLY. I am not talking about cross. I am talking about direct.

Mr. QUIRK. He will be available for testimony after a while, Captain, when you are finished.

1011 By Col. BARRON:

Q. Do you know of any similarities?

A. I do know, sir, that they have special routes that furnish rush hour service only. Those lines are not operated throughout the day. To name those lines offhand, I doubt very much that I could do it without some further reference. However, these lines that are operated during rush hour periods alone, bear similar characteristics to the Pentagon operations in that they are a rush hour service, as Mr. Lane states here. They provide serv-

ice for a limited period of the day, mostly movement in one direction, and in some few instances at least the busses deadhead back and carry no passengers whatsoever, and in that respect, in that they are operated only for a short period of the day, they carry passengers essentially in one direction, those lines are similar.

By Capt. DAVIS:

Q. Now, the extent that these other rush hour services need more busses during the rush hours than they need during the daytime, to that extent the company requires in aggregate more busses, does it not?

A. The situation with respect to equipment for these rush hour services for these other lines should be similar to that of the Pentagon.

Mr. LANE. I think we can stipulate that rush hour services are rush hour services.

Exam. MATTINGLY. And take more busses than regular services.

1012 Mr. LANE. And take more busses than other services.

Exam. MATTINGLY. That is established on the record.

Capt. DAVIS. And to that extent you use more busses for those services and charge up the extent of those additional busses to those services, the unit cost of that service may be increased.

Mr. LANE. I object to that question as something that is not in ground; it is asked by Capt. Davis. It is a leading question and does not bring forth any fact whatsoever.

Capt. DAVIS. I admit it is a leading question but that is just to expedite the thing. He is an expert witness.

Exam. MATTINGLY. Why don't you stipulate that rush hour services are more expensive to operate than ordinary service.

Mr. LANE. Yes, we will stipulate to that.

Mr. PRETTYMAN. We also stipulate that Capital Transit has not another service in the whole system that is similar to the Pentagon except Pentagon.

Col. BARRON. Of course we won't agree to that.

Mr. PRETTYMAN. I will ask the Major does the Capital Transit Company have any other rush hour express non-stop service from point to point?

The WITNESS. Not to my knowledge, sir; not just from point to point because all these other lines make at least some stops to pick up passengers and a certain number of stops to discharge.

1013 By Capt. DAVIS:

Q. There are some of them that are express for substantial distances, are there not?

A. Yes, sir.

Q. Like the Chevy Chase line.

A. That is my understanding.

Q. Now, have you made any study to determine whether some of these other rush hour lines are also losing money on the theory on which Exhibit 89 is prepared?

A. I have not.

Q. Have you any reason to believe——

Mr. LANE. Whoa; whoa.

Exam. MATTINGLY. Just a minute, Captain. If he has made no study, there is no use asking that question.

By Capt. DAVIS:

Q. Major Ristrop, you are familiar with the operations, are you not, of these Virginia companies to a substantial extent?

Mr. WHITTLESEY. Just ask him if he is,

The WITNESS. Yes, sir; I am.

By Capt. DAVIS:

Q. From your knowledge of their operations, do you know whether certain of them now have excess capacity operating from the Pentagon to Washington in the afternoon?

A. Yes, there is some. I observe these—I am able to observe these Virginia bus companies almost daily, and I do know that there are quite a few busses going out that are not loaded according to rush hour standards. There are other—
1014 perhaps there are other times at which these busses are not loaded during the peak period. I don't get a chance to observe them individually each morning. However, we have some back records that would indicate the loading capacity of them and I think these recent checks that were made by the Capital Transit Company and these other checks would indicate the exact figures as to quantities on those, as well as our own checks.

Q. And to what do you attribute the fact that there is excess capacity there, whereas the Capital Transit busses are overflowing during that period?

Mr. LANE. If he knows.

Mr. PRETTYMAN. Objection.

Mr. LANE. We will object to the form of the question on the ground that it is improper, irrelevant, and immaterial.

Exam. MATTINGLY. First ask him what the fact is if he knows, and then what he attributes it to.

By Capt. DAVIS:

Q. I ask you——

Mr. PRETTYMAN. What he figures the rush hour capacity of the Virginia busses to be.

Exam. MATTINGLY. That is what I want, that is what I think should be developed first.

By Capt. DAVIS:

Q. I will ask you, Major Ristrop, whether during this same period the Capital Transit busses are carrying very full loads, if not too full loads.

1015 MR. LANE. We object to the form of the question.

Exam. MATTINGLY. Wait a minute now. What period are you speaking about, Captain, the rush hour period in the afternoon?

Capt. DAVIS. Yes, sir; I was just trying to ask this other question to——

Exam. MATTINGLY. Well, can't we admit the Capital Transit busses are pretty full in the afternoon rush?

Capt. DAVIS. If your Honor please, what we have in mind in show is this: Some of these Virginia busses, as we understand it, go back with light loads for the reason that they charge a higher fare, so that they don't take people, and the result is the Capital Transit has to put on more busses at a total over-all greater expense.

Exam. MATTINGLY. Well, go ahead and develop the facts, whatever they are.

Mr. HILL. I would like to point out that the principal witness for the War Department, since he was a major general, nonetheless has testified that there is a very serious condition of overcrowding which will be remedied by a reduction of fares.

Now, the Captain seems to be contradicting his own witness.

Capt. DAVIS. No, sir; I am just supporting that, because if we had a removal of the descrimination, their people would
1016 ride all the busses interchangeably. That would reduce the loads on many of those overcrowded.

Exam. MATTINGLY. How about going ahead and asking the questions.

Mr. LANE. I will object to it on the ground that it is already in evidence by the Army's own counts as to the number of busses in rush hour periods of all of the companies, and if Exhibit 16-A—if I am not mistaken, that is a count of the actual busses serving the building, and the loads on and off at the Pentagon Building.

Now, what is the use of this witness testifying to it? He has already submitted the exhibit. It speaks for itself.

Capt. DAVIS. I think he is entitled—all right. If the facts are in, then we don't need to go into the facts any more now, and he can express an opinion on them. I thought you wanted him to state the facts on which he based it.

Mr. LANE. We don't want his opinion. We still have the opportunity of cross-examining him on the exhibits.

Exam. MATTINGLY. If he has any further explanation to make on the exhibits, let him make it.

Capt. DAVIS. I can see very well why Mr. Lane does not want those opinions in the record.

Exam. MATTINGLY. Go ahead, Captain, whatever your question is.

By Capt. DAVIS:

1017 Q. Major Ristrop, is it your opinion that if the discrimination in fares was removed so that there was a uniform fare between these installations and the District——

Exam. MATTINGLY. I agree; it is if the difference in fares were removed, am I right?

Capt. DAVIS. All right; the difference.

By Capt. DAVIS:

Q. That the effect of removal of such differences would be to reduce the necessity for the same number of busses to carry the peak hour traffic?

A. I think that you would undoubtedly have some people that are now riding Capital Transit busses who would gravitate to the Virginia busses. Some of them go to the Capital Transit Company busses because of this lower fare, and if the two fares were the same, each cost the passenger the same amount, I think that you would have a greater number of passengers handled by the Virginia companies.

Mr. LANE. And if the planning report had been accepted by the War Department that would have been accomplished, would it not?

Mr. HILL. Precisely.

The WITNESS. You mean the equalization of fares?

Mr. QUIRK. On his own premise.

Mr. LANE. Isn't that correct?

The WITNESS. You would have had an equalization of fares according to the planning report as far as I can recall.

By Capt. DAVIS:

Q Well, now——

Mr. LANE. Answer my question yes or no.

1018 Capt. DAVIS. He is entitled to explain his answer.

Mr. LANE. He has not answered the question yet.

The WITNESS. Will you restate the question, please?

By Mr. LANE:

Q. If the planning report had been allowed to become effective by the War Department, it would have had the effect of equalizing the fares from the District of Columbia to the Pentagon Building

over the Capital Transit and the three Virginia companies, isn't that correct?

A. Before I would answer that yes or no, I would like a further clarification of the question, if I might have it, sir.

When you speak of equalization of fares, do you mean complete equalization or just that they can get two fares that have the same monetary value or do you also refer to the effect that they can get that fare or else pay a higher fare? Because that would disturb my answer as to whether I could say yes or no.

Q. Have you read the planning report?

A. Yes; I have.

By Mr. LANE:

Q. You made the statement that if the fares were equalized between all the companies serving the Pentagon Building, it would serve to equalize the flow of traffic among all the lines.

A. I think that is correct.

Q. Doesn't the planning report call for the installation of a 13½-cent fare from all points in the District of Columbia
1019 to the Pentagon Building by all of the carriers involved and to the other points involved in this hearing?

A. That did not include the Rosslyn shuttle as far as I recall, and it does not exclude the present 10 cent fare.

Q. But it would have equalized it, the fares, to all intents and purposes, would it not, Major? Answer the question yes or no, please.

Capt. DAVIS. The report speaks for itself as far as it is material.

The WITNESS. I can state, Mr. Lane, I can't answer yes or no; I can say in so far as these particular tickets are concerned; yes.

Mr. LANE. That is all I want to know.

Exam. MATTINGLY. Now, if you have anything else to say, go ahead and say it.

The WITNESS. Well, it would equalize fares as far as the ticket was concerned, but it would not for those people who did not avail themselves of the ticket. Those fares would not be equalized in that respect, and that is the qualification that I wanted to make.

Mr. PRETTYMAN. Are you through?

Capt. DAVIS. I had some other questions as to other points.

Mr. PRETTYMAN. On this point, by equalizing the fares, you would lighten the load on Capital Transit; is that your
1020 testimony?

The WITNESS. That is provided your Virginia busses with their counterflow capacity could take on these additional passengers.

By Mr. PRETTYMAN:

Q. Is it your opinion that they would or that they would not?

As I understood your testimony, you said if the fares were equalized, a lot of people using Capital Transit busses would use Virginia busses; did I understand you correctly?

A. They would use those providing they were there to use, but you have a shortage of equipment right now, and you can't put any more people on them than you can haul right now. Right now there is apparently some excess capacity on Virginia bus companies, and until that is filled up, I would say those people would gravitate to those companies.

Q. Now, when you have lightened the load on Capital Transit, would it be your recommendation to Capital Transit to run fewer busses?

A. It is my recommendation, sir, that the Capital Transit or any of these other companies, as far as that goes, furnish only that transportation which is necessary. I believe we are consistently maintaining that viewpoint.

Q. I understand that, Major, but I am getting at your point. You have raised the point that the equalization of fares caused passengers to gravitate from Capital Transit to these other
1021 busses.

Now, I asked you the question what effect would that have in your opinion upon your recommendation as to the service of Capital Transit? Should Capital Transit then run fewer busses, or should they lighten the load and have less crowding on the busses now running?

A. During the present emergency I would state that they should, if the number of passengers fell off, that the service should be cut correspondingly.

Q. So your recommendation would be that if these fares are equalized, that Capital Transit should run fewer busses.

A. Well, that is a conclusion that would depend upon whether these people would actually gravitate to these busses, and they had capacity enough to take them.

Q. You said they would.

A. I think you could do something of that sort.

Q. You said they would. Now, I just want to follow your ideas through to a final recommendation and know whether you are going to tell the War Department that your recommendation in case these fares are equalized is that the Capital Transit run fewer busses. That is all I want to get.

A. No, sir; it would not be that they run fewer busses, but that they maintain such service as called for.

Now, that would, I believe, call for less service by the Capital Transit Company, or a lesser number of busses would be
1022 required.

Q. Less busses?

A. I think so.

By Mr. LANE:

Q. That would increase the load, then, upon the Virginia companies?

A. To what they could bear, Mr. Lane.

Q. What did you mean, what they could bear? You testified a minute ago as to the standard rush-hour capacity. What is the standard rush-hour capacity?

A. It depends upon your bus capacity and your arrangement of it. As to how many standees that they can take in that particular bus.

Q. Well, now, then, do you think that it works out on some standard of some sort?

A. It will vary for the different busses, Mr. Lane.

Q. And the different days, isn't that true?

A. No; I would say that the load would vary with the capacity of the bus. It would not be determined by the day, but rather the capacity of the bus.

Exam. MATTINGLY. And the ability of the passengers to stand the pressure, too.

The WITNESS. Yes, sir.

By Capt. DAVIS:

Q. Major, to the extent that the overheads in Exhibit 89 were increased by a substantial peak, would the reduction of the
1023 number of busses decrease the unit cost as shown in that exhibit, if you know.

A. I have not made a study of that, Captain Davis, to this time.

Q. Major, there has been some discussion in the record here about the roadway system in the vicinity of the Pentagon, and I refer particularly to the overheads and the bridges there.

Mr. LANE. Financial?

Capt. DAVIS. No; physical. I believe some of the counsel referred to it as the cloverleaf.

By Capt. DAVIS:

Q. Have you any comment to make on that system of roadways, with particular reference to the effect on the saving of time and the likelihood of accidents, and so on?

A. The roadway is designed to eliminate traffic conflicts and accidents. It is a one way operation on most of these roadways.

They are divided, and in that way you have less conflict. You don't have crossing streams of traffic at grades. You have no need for police direction at these points and the stopping of traffic and starting of traffic. In that respect the traffic can move more expeditiously and safely.

It increases the mileage slightly, but the amount of time saved due to lack of congestion on this thing compensates for that as far as the time factor is concerned.

1024 Q. With respect to the accident record of any bus company, is it your opinion there will be fewer accidents on a nonstop operation per bus mile than on operations with a lot of stops?

A. Well, it is generally known——

Mr. PRETTYMAN. We object to that. He has not shown any qualifications to testify as to that.

Capt. DAVIS. He has been traffic engineer for large operations. He has made a lot of studies. He is entitled to as good an opinion as any other witness here who testified on that.

Mr. QUIRK. Well, when would the first accident occur within the first 24 hours or the third day?

Capt. DAVIS. I am asking him a general question, not particular accidents.

Mr. QUIRK. You asked him his opinion about accidents.

Capt. DAVIS. In general.

Mr. QUIRK. Does the Examiner want to know?

Exam. MATTINGLY. I don't think it would be very helpful but if you would like to have in the record such an opinion, go ahead, Captain.

The WITNESS. It is generally known that in highways of this particular design, where you have divided roadways, no crossings of traffic streams at grades, they are less hazardous and produce less accidents. You can get national statistics to show that.

1025 Also from the passenger viewpoint, a great number of your passenger accidents are those that come in the category of those who receive injuries or claim injuries from boarding or alighting from the vehicle.

In that respect the Pentagon, I should state, would be advantageous from that viewpoint, because you have no weather conditions to contend with. You have a separate loading platform for each bus and platform so that you won't have to step up so high on the steps.

Now, that does not necessarily apply to the other end where you have similar loading conditions to what you have anywhere else.

By Capt. DAVIS:

Q. You don't have any stops in between and that makes a difference in your opinion, does it?

A. From what viewpoint?

Q. The fact that you don't have stops during the progress of the trip, where people may get on and off in traffic and have accidents.

A. Well, the stops would not be the factor in there unless there is a sudden stop so as to jostle people or throw them down, or something like that, but it is merely the accidents occur in getting on and off busses; a great number of these passenger accidents occur in that respect.

Capt. DAVIS. That is all we have at this time.

Cross-examination by Mr. PRETTYMAN:

1026 Q. Major, doesn't each passenger get on and off a bus once?

A. That is right.

Q. So if you have a certain number of passengers getting on and off, there are the same number of potentialities of getting on and off; is that right?

A. That is right, sir; but I think that the location and the manner in which they are handled, condition of platform and conditions under which they are loaded or unloaded has some influence on the accidents.

Q. Now, you talk about the constructions to prevent accidents. The Pennsylvania Railroad between Washington and New York constructed for the purpose of preventing accidents, was it not?

A. What was that question again?

Q. I say the Pennsylvania Railroad between Washington and New York was constructed with the idea of preventing accidents, was it not?

A. I don't know, sir, but I presume that it was; most of them are.

Q. Well, you are a traffic engineer. Don't you know that line was laid out with the idea of preventing accidents?

A. You are talking about the railroad line or the pike?

Q. Yes; the railroad line.

A. Well, all railroad lines try to achieve that objective.

Q. The Pennsylvania had quite somewhat of a wreck here.

1027 A. That is right.

Mr. QUIRK. Isn't this just a little bit far afield, Mr. Examiner?

Exam. MATTINGLY. Well, as far as Philadelphia.

Mr. PRETTYMAN. It is not so far afield as his direct testimony.

Mr. HILL. I would like the Commissioner to take judicial notice to that, that that accident occurred on a non-stop run.

Exam. MATTINGLY. Well, if we have any legitimate cross-examination of this witness, we will go ahead.

By Mr. LANE:

Q. Major, you implied or testified a minute ago that this highway was so constructed that no policing was necessary. You didn't imply that it does not—did not mean to imply that it does not require policing by the military police, did you?

A. No, sir; I said it is not necessary to have police, such as you ordinarly have at a point to cause the traffic to stop and cause the traffic to go. That is where you have these grade separations, where the grade crossings are eliminated, they go by means of cloverleaf rather than stop the traffic while the other goes through.

Q. Have you in the course of your examinations had any opportunity of ascertaining the number of accidents, or claims for
1028 accidents that any of the bus compaines have had in that new system of highways?

A. On these particular operations, the operations of the bus companies?

Q. Yes.

A. No; I have not inquired into the records of the various bus companies.

Q. Then you don't know whether or not the proportion of accidents per mile of road is greater or less than it is in any other system of highways, do you?

A. Only this——

Q. Answer my question yes or no; please.

Capt. DAVIS. Let him explain his answer.

Mr. LANE. When I get it.

Mr. HILL. Let him give the answer first.

The WITNESS. Will you ask that again, Mr. Lane?

By Mr. LANE:

Q. You do not know as a matter of fact whether the claims or the accidents filed against the bus companies operating through this area are greater per mile of roadway in this area adjacent to the Pentagon than in any other similar stretch of road in the vicinity of Washington?

A. As far as those bus companies are concerned, I do not, Mr. Lane.

Q. Now, Major, you testified a few minutes ago as to your experience. What was your title when you were with the transit company in New Orleans?

1029 A. First title was research engineer. The second was traffic engineer.

Mr. PRETTYMAN. Were you the head of the department, Major?

The WITNESS. Of the latter, sir.

Mr. PRETTYMAN. You were chief traffic engineer?

The WITNESS. That is right.

By Mr. LANE:

Q. As a traffic engineer what were your principal duties?

A. The principal duties pertaining to that were the expediting of traffic movement.

Q. Did you at any time, when you were a traffic engineer, have any experience with the finances or the accounting of the company for which you worked, in connection with your duties?

A. Yes, sir, in some respects, Mr. Lane.

Q. In what respects, Major?

A. That pertaining to traffic.

Q. In what respect would finances of the company have to do with traffic?

A. The cost of traffic installations, for instance.

Q. Well, that is merely a matter of purchasing equipment, isn't it? It has nothing to do with the financial operations of the company itself?

A. The over-all financial operations of the company did
1030 not enter into the accounting phases of it. Rather shall I say did not enter into the accounting phases of the financial aspects.

Q. Well, were you as a matter of fact consulted by the officials of the company at all regarding their financial problems in your duties as traffic engineer, and if so, give me the names of the officers that consulted you.

A. Well, yes; that was in matters relating to accidents and the cost of accidents to the company—if I remember correctly, the man's name was Clements. I worked directly under Mr. Watkins.

By Mr. PRETTYMAN:

Q. What was Mr. Watkin's title?

A. Superintendent of railways, sir.

Q. What was Mr. Clements' title?

A. Chief claims investigator.

By Mr. LANE:

Q. But none of the general officers of the company consulted you regarding the general finances or accounting methods of the company, did they?

A. They—let's see—on the methods of financing and how our funds were accounted for? No, sir.

Q. Have you ever studied accounting?

A. Yes, sir.

Q. But you were not employed by the utility in New Orleans in that capacity.

A. Not as an accountant, sir.

1031 Q. What was the name of the company? I have forgotten the name of the company in New Orleans for whom you worked.

A. New Orleans Public Service, Inc.

Q. Is that a municipally owned company?

A. No, sir; it is privately owned.

Q. Was there another company in New Orleans?

A. No, sir; there is no other.

Q. Didn't you at one time hold a job with the City of New Orleans?

A. That is right, sir.

Q. When was that?

A. 1935 to 1939, Department of Public Safety.

Q. And your connection with the New Orleans Public Service Corporation came after that, is that correct?

A. Before and after. I worked for them beginning in January of 1931. I left their employ as one of the younger employees when the depression came on.

Q. Left who?

A. The employ of the New Orleans Public Service.

Q. Yes.

A. And did this other work.

Mr. LANE. That is all.

By Mr. PRETTYMAN:

Q. I just want to get straight your exact status down there in the New Orleans Public Service there at the end. You say you

1032 went back there from October '39, to October '40, right?

A. That is right, sir.

Q. And it was at that time that you were traffic engineer?

A. For the utility; that is right, sir.

Q. For the New Orleans Public Service.

A. That is right, sir.

Q. And your immediate superior was Mr. Watkins, who was the superintendent of transportation?

A. That is right, and then I reported also to the vice president in charge of public relations, Mr. Myers. The numerous consultations were with the vice president in charge of operations, Mr. Mene, and some with Mr. Patterson, president of the company.

Q. Well, the schedule of offices was president, vice president in charge of operations, and then the superintendent of transportation, and then your division was one of the divisions under him, is that right?

A. Under the superintendent of transportation.

Exam. MATTINGLY. Any other questions of Major Ristrop?

Mr. WHITTLESEY. I have one.

By Mr. WHITTLESEY:

Q. How old are you, Major

A. 35, sir.

Q. From the time when you first worked for the New Orleans Public Service Company you were 23.

A. I would have to figure it back, but if that it what is
1033 indicated, I imagine that is what it is. I don't know what it is. It would be a little bit less than that, sir, because I started in January of that year.

Q. If all persons who travel to the Pentagon Building by means of public transportation systems were charged a fixed uniform fare, say 15 cents one way, would the logic of your statement that you made under direct examination be the same?

A. What statement is that, sir?

Q. The statement that the people would have a tendency to patronize the Virginia bus companies, causing a flow of traffic away from the Capital Transit Company system?

A. I think that any fare that you have, regardless of the level, if you have one which is cheaper, costs the people less to get to approximately the same place, and if you then equalize those fares, either by raising one or lowering the other, that your will have those people who formerly sought the lower rate of fare who might find this other fare which formerly cost them more more advantageous and that they would use it.

Q. Now, as traffic engineer of the Public Service Corporation New Orleans, did you advocate or suggest the installation of service over lines which would result in a loss—a net loss to the company?

A. That is sometimes done, sir, because you don't always figure——

Q. I asked you did you.

1034 A. I would have to remember back to specific cases, if you will let me think back.

Q. Surely.

A. I don't believe I had occasion to do that, sir.

Mr. WITTLESEY. That is all.

By Mr. HILL:

Q. What experience did you have with traction companies prior to the time when you went with the New Orleans Public Service?

A. None, sir; other than as a passenger, general public.

Q. Are you a CPA?

A. I am not.

Q. Have you had any experience in financing before you went with the New Orleans Public Service?

A. No, sir; I was a student.

Q. That is quite a large traction company, is it not?

A. Yes, sir; it is.

Q. How many miles of route do they have?

A. I don't recall any more, sir.

Q. Can you give us a general idea?

A. It has been a while since I have been there now. Some of their lines have been since abandoned; other have been extended.

Q. You were with the New Orleans Public Service in 1940, were you not?

A. That is right, sir.

1035 Q. You do not recall the length of their lines?

A. At that time I was not concerned with that particular angle of it. I was concerned with it in early years, but not during that period.

Q. But at the time you went with the New Orleans Public Service as traffic engineer, if that was the engineer job, you had what was your previous experience?

A. Pardon?

Q. At the time you went with New Orleans Public Service you had no previous experience in transportation?

A. No; other than as a passenger.

Mr. HILL. That is all.

Exam. MATTINGLY. Any further questions? That seems to be all for this time, Major.

The WITNESS. All right, sir.

(Witness excused.)

Col. BARRON. If Mr. Heberle is ready, we are.

Mr. PRETTYMAN. Before Mr. Heberle goes back on the stand, assuming they are going to ask him questions about Exhibit 98, I would like to ask Mr. Kosh a few questions in regard to Exhibit 98.

Exam. MATTINGLY. Very well.

DAVID A. KOSH was recalled and testified as follows:

1036 Cross-examination (cont.) by Mr. PRETTYMAN:

Q. Have you Exhibit 89 before you, Mr. Kosh?

A. No; I have not. If I may borrow this one here, I will have it. I have a copy now.

Q. Looking at 89 and 98 now, Mr. Kosh, I think you pointed out that the pair of figures on 89 under operating expenses are approximately the same figures as shown on 98.

A. I said that the first item, maintenance of equipment checks with 3/100ths of a cent. The second item, operating garage expense, checked exactly.

Q. Now, dropping down into the next group of expenses, the first four on Exhibit 89 are direct allocations; correct?

A. It says direct. I don't know what that term means.

Q. At any rate, it does not purport—you heard Mr. Heberle testify about it the other day, didn't you?

A. I was not here for the first—when he first introduced his exhibit. I am sorry.

Q. I see. Now, your figure on traffic——

A. My figure on traffic?

Q. Traffic motion, on 98.

A. Let me find it.

Q. Yes.

A. You don't mean the advertising, do you?

Q. On the 7/100ths of a cent; right?

A. Yes; that checks.

1037 Q. Well——

Capt. DAVIS. Just a minute. These are not your figures. These are company figures on your exhibit.

The WITNESS. I presume when Mr. Prettyman says my figures, he means figures on Exhibit 98.

Capt. DAVIS. Which are taken from the company's report.

The WITNESS. The divisions were made by me, yes.

By Mr. PRETTYMAN:

Q. The next group of expenses, administrative and general expenses, there are three figures on Exhibit 89.

A. Yes.

Q. They total 5.04 cents.

A. That is right.

Q. And on Exhibit 98, 3.78 cents; right?

A. That is right.

Q. Now, that is a difference of——

A. 1.26.

Q. 1.26?

A. That is right.

Q. Now, that difference appears in rent of equipment, does it not, 98 has rent of rolling stock, .5.

A. That is right.

Q. And Exhibit 89 has 1.84 cents; right?

A. The difference is substantial—almost—not quite, but the difference is there.

Q. So that the difference in the rent figure——

1038 A. Yes, if you remember, Mr. Prettyman, I did not say these were wrong. I said I wanted to find out what they were.

Q. That is right. I am just tracing it through with you.

A. There is that .6 of a cent difference there, yes.

Q. Right. Now, then, let us skip depreciation for just a second. Taxes, the system figure is, according to Exhibit 98, 2.7 cents.

A. That is right.

Q. And Exhibit 89 is only 2.14 cents.

A. That is right, a diff rence of 5 cents.

Q. That is right. Now, let us go back to depreciation a moment.

A. Yes.

Q. Depreciation for the system is 4.43 cents.

A. That is right.

Q. And the depreciation on Exhibit 89 is 6.74 cents.

A. Right.

Q. Now, let us examine depreciation for just a moment. I will ask you to assume with me—well, let us make this remark, both of those figures that I have mentioned are depreciation per bus mile.

A. That is right.

Q. All right. Let us suppose we have two busses, each of them cost $11,000.

A. Yes.

1039 Q. The life of them let us assume for simplicity is 11 years.

A. Yes.

Q. Then under the straight line depreciation that is a thousand dollars a year depreciation.

A. That is right.

Q. Let us suppose they both run the same number of days. Let us take 325 days.

A. Yes.

Q. Then the depreciation on each bus is about $3 a day.

A. You are going to split up instead of annual rate into a daily rate, roughly.

Q. That is right.

A. That is right.

Q. All right. Now, let us take one of the busses, and he runs in the system and let us assume that the system miles per day for a bus is 65 miles.

A. Yes.

Q. Now, what is the depreciation per bus mile of that bus?

A. 65 miles divided into $3, a little less than 5.

Q. About 4.6 cents.

A. A little less than 5.

Q. Now, suppose the other bus is in rush hour service exclusively. Suppose it runs 2½ hours a day, and it makes 13 miles an hour in rush service. That will be 30 miles a day.

A. Yes.

1040 Q. What is the depreciation per bus mile on that bus?

A. Well, that is $3 per day, 30 miles, 10 cents. Of course, Mr. Prettyman—may I explain this? This is all just arithmetic. I mean it does not mean anything as far as costs are concerned. I hope you don't imply that I am implying that this is a proper 10-cent per bus mile actual economic cost.

Q. Oh, no.

A. You just asked me to divide numbers.

Q. That is all. All I am trying to bring out, Mr. Kosh, is something on which I think we will agree, namely, that the depreciation on the straight line method is on the time basis.

A. That is right.

Q. And when you translate that into bus mile basis, it depends on how many bus miles the bus makes.

A. That is why I remarked earlier in the day that I agree with this type of allocation in general, because it is subject also to juggling and does not mean very much.

Q. That is right. Now, I want you to answer just one more question. If you took your system figure shown on Exhibit 89——

A. The depreciation?

Q. No, no; over-all, of 36686.

A. Yes, sir.

Q. And add to it the return on investment at 7 percent shown on Exhibit 89.

A. You mean at 5; three-fourths.

Q. Yes. You get 42 cents; don't you?

1041 A. I will take your word for it unless you want me to check the addition.

Q. No; check it.

A. Yes; you get 42 cents. You get that answer if you add those two numbers. That does not mean anything as far as costs are concerned.

Q. Now, you take the system costs, compute it according to Exhibit 98, and add it the way Mr. Heberle suggests; and you get a little bit less.

A. But you don't get what Mr. Heberle got.

Q. But you are still under the revenue per mile.

A. Arithmetically your statements are correct.

Q. You are still a little bit off, I mean.

A. Arithmetically you are perfectly correct.

Mr. PRETTYMAN. I don't have any other questions.

Exam. MATTINGLY. Any other questions?

(No response.)

Exam. MATTINGLY. You are excused, Mr. Kosh.

(Witness excused.)

Exam. MATTINGLY. Mr. Heberle, will you take the stand, please?

J. E. HEBERLE recalled and testified as follows:

Cross-examination (continued) by Capt. DAVIS:

1042 Q. Mr. Heberle, since this morning session have you had an opportunity to examine further Exhibit 98?

A. Yes, sir.

Q. Are you prepared to tell us now whether the items and the dollar amounts are in accord with those shown in your report to the Public Utilities Commission for the first seven months of this year?

A. Yes, sir. I have made that comparison, and while I have not checked in detail so far as the wording is concerned, the dollar amounts are correct and the totals are those reported for the first seven months to the Commission; and I might further state that the derivatives on here, I have compared in this overall. By derivatives I mean the column headed average cost per bus mile. Those figures were not reported to the Public Utilities Commission, but I have gone a step further just to check the arithmetic against the miles that were operated that are shown at the foot of the statement; and those miles are also the miles operated by the bus system in the first seven months.

Q. Does this total bus miles for the period include nonrevenue or deadhead mileage?

A. It does.

Q. And when you supply us with that other figure, can you also supply us with the total figure for deadhead mileage?

1043 A. I doubt that I have that, Captain, but I will look into it and see what I do have. I don't think we keep segregation of revenue and nonrevenue miles so far as bus miles are concerned.

Q. Do you have an opinion as to how much that would be in terms of percentage?

A. I am sorry I could have no opinion. It is very complicated.

Q. Mr. Heberle, will you turn for a moment to your annual report to the Public Utilities Commission on the schedule which shows statistics of operation? I believe that is schedule 415 on page 403. I direct your attention to the number of passenger hours for motor bus operations, being 2,657,674, and I understand

the similar figure for the first seven months of the year 1943 is 1,590,792 hours. Now, assuming——

I understand? Correct?

Q. Now, assuming that you own a total of 1,249 busses, can you tell us what the average number of hours each bus in use per day is, approximately?

A. Well, now, are we talking possibly of the month of——

Q. Well, either for the seven-month period or for the year. I assume it is about the same.

A. No, Captain; we will have to confine it to one or the other and even the seven months will be—I may be able to get the seven months. It may be a little difficult now. What you are after is the bus hours per bus.

1044 Q. The average bus use in terms of hours for each day.

A. Just taking the calendar days in the first seven months, I understand? Coorect?

Q. I beg your pardon?

A. Do I understand that you want me to take—remember, I have hours for the first seven months, calendar days that are in there; and I can get the average numbe rof busses that we owned and leased during that seven months, and I can divide one by the other and it will give me a figure for seven months. Then I can break that down, whatever way you suggest.

Q. Yes. We would like to have that figure.

Let me ask you this before you start to figure it out, Mr. Heberle.

Did you make such a computation prior to preparing Exhibit 89?

A. No. No; a computation—the only computation with respect to bus hours that I made in preparing that exhibit was to have computed the average use, the average number of hours per bus during the rush hour period of the system as a whole, and of the Pentagon line. I had not gone into the overall characteristics.

Q. Do you have that figure now?

A. For the seven months the average per bus owned or leased is 1,284 hours.

Q. And how much is that in terms of per day?

1045. A. Approximately 6½.

Q. Did you take that into consideration in allocating 2 hours out of 4 hours to the Pentagon line? In other words, making the assumption that the busses were used for only 4 hours total.

A. No, Captain, I did not take into consideration several of the factors that I have used here.

One of the factors that I have used here is 1,239 busses. That is the average number that were leased or owned during the seven month period. In my calculations I did not go to the number—

to the total number of busses leased or owned, but I went down to the actual number of busses that were used, and to that I added 10 percent for spares.

In other words, I am stripping down to the busses required for the operation, and in my comparison, where I used the hours, in the rush hours between the Pentagon and others, I used that exactly on the same basis, that is the busses required in those rush hours regardless of the number owned, and in the Pentagon the busses that were required for that operation without regard to the number owned, but I had in each case, I explained, instead of taking naked the number that were actually required, I added 10 percent for spares.

Now, these figures here would give an entirely different picture if I had approached it from this angle. I don't know just how I could have worked out Pentagon. I don't
1046 believe I could, if I had worked out Pentagon from this angle, but the two figures are not comparable.

Q. Well, now, in allocating the depreciation and the rentals on these 95 busses which were used in part on the Pentagon and in part on the other lines, I believe you assumed that the Pentagon use was for two hours and that they were used for two hours elsewhere, did you not?

A. Yes, sir; about 50 percent each way.

Q. So that these busses then are being used elsewhere much less than the average of your system; is that correct?

A. They are used—now, I would like to strike that out, if you please.

Let me get your question. When you say these busses, do you mean the Pentagon busses?

Q. Yes, sir.

A. I have assumed that the Pentagon busses would receive the average use of rush-hour busses in our system, average—they would have been credited with the average use in all busses, but since—that is, that those busses would receive that and that one-half of the time since the Pentagon rush represented one-half, in its per bus use, of the system, I ascribed one-half of it to Pentagon and one-half to the system. That is, one-half of those buses that were operating on the Pentagon. I know of no fairer way to make the different divisions.

1047 Q. Were there buses ever used for non-rush-hour operation?

A. I went into that thoroughly the other day, that the busses that are required for rush-hour operation are not required for off-peak, but that I could not say that a bus that operated on Pentagon in this rush-hour operation, that at no time it operated in the off-peak. If it did, another bus, another unit, if you please, went

off on the shelf during the time such bus was used, because these busses are purchased for the rush-hour period, and these particular busses used are purchased for Pentagon, and when we have a service of that kind, it seems entirely appropriate to charge it to the operation, the units of equipment that that operation requires or demands.

Q. Are all your busses used substantially during the rush-hour period?

A. At the present time, no. When I say at the present time, I mean under these restrictions, and even before the restrictions we were having difficulties with manpower and all of our busses were not used.

We also have a condition where, like all transportation companies, the only busses that have been required actually to be retired and scrapped are those that have for one reason or another become no longer able to roll. Parts are missing and we have retired and scrapped a few of those busses. But beyond that we have a great many busses that we keep in operating condition.

1048 So that if we could get them out, or the demand were there, we could use them.

Q. I believe we asked you——

A. Now, there was a question of that kind asked, if you recall.

Q. I was go to ask you if you had those figures.

A. Because of the changes in busses I am giving these figures on an average for the first seven months, and I am separating them into two periods; the first five months, before the restriction on the use of rubber, and I find during that period, as an average, that including 10 percent spares over the maximum, there is a total requirement of 1,110 busses, and that during that period our average number of busses on hand, including leased, was 1,235. That is a difference of 125 busses. That will include busses of all kinds, such as I have been describing.

Now, for the most of June and July, since I have been using a seven-month period, the average number of busses required, including 10-percent spares, is 982, and the average number of busses owned and leased it 1,248. You will probably remember that the O. D. T. called upon the company for a reduction of at least 20 percent in mileage, and I think we accomplished in the neighborhood of 22. That was on the rubber and gasoline conservation.

Q. In other words, you have about 25 percent of your
1049 busses not in use.

A. Well, no; it is 266 out of 1,248; it is nearer 20 or better than 20.

Q. 20 percent.

A. As an average right now.

Now, that condition is the product of two things at the present time. One is the ODT rules. And then, to some extent it may be affected by manpower also, because while when the rubber program or rather this conversation program was put in, we immediately had the advantage of somewhat slackening of the manpower situation. The war demand since that time has pulled down our force to an extent where we are getting down to the tight area again.

By Mr. WHITTLESEY:

Q. The depreciation for these excess busses, did you charge any of that depreciation into this Exhibit 89?

A. No; I did not.

By Mr. DUNLOP:

Q. Following that up, is the practice you have had of having excess busses sitting in the barn have any effect whatever on the Pentagon operations?

A. No; not a particle. No, no costs were running to this statement from any of those busses that were not being operated.

By Mr. WHITTLESEY:

Q. To that extent Exhibit 89 is understated if considered as a portion or part of your system operation.

1050 A. I think that there might be some understatement in that exhibit running from that. There is a further—there was no attempt on my part whatever to try to build up a high cost statement on Pentagon. I was going after facts, and I had certain facts with respect to that line that I do not have with respect to other lines, because it is a special operation and we have taken particular pains to determine some of those facts.

Now, the facts that I have with respect to costs are the ones that are marked direct, and I call that particularly to Mr. Kosh's attention, since he seems to have missed it the other day. The costs on Exhibit 89 that are marked direct are the costs that were incurred directly on that line and that we have kept a record of, and where we had direct costs we substituted those for system costs.

We did not have all direct costs attributable to Pentagon. We did not try to keep costs on the line as a whole, but there were certain of these elements that we did keep. Those I have used.

By Capt. DAVIS:

Q. When you say that you have kept these separate direct costs, you meant in the case of the bus operators you allocated their services on a time basis?

A. Done directly from each man's pay for each day and right down to the minute, and the rate of pay that the man received; things that ordinarily we don't have. If the man was a
1051 low rate man the dollars that were charged to it were the number of hours and minutes, because we keep time on a minute basis, and not in decimals of an hour, and it was the hours and minutes times the man's rate, and if it happened to be an overtime rate and frequently it is in the rush hours, the overtime rate was the one that was ascribed to it.

As near as we can get this is an accurate statement of costs on these direct costs, as nearly as anybody, I will venture to say, because we have had experience in getting costs.

Q. Now, in computing this depreciation, you testified the other day that you made your allocation on the basis only of the rush hour used.

A. That is correct.

Q. Is it your opinion that the off-peak or non-rush-hour service should not bear a proportionate share of the depreciation?

A. Let me put it this way——

Mr. PRETTYMAN. Let me hear the question.

(Pending question read.)

The WITNESS. If there were any off-peak or non-rush-hour service on the Pentagon line, I would have it bear its share of depreciation, but Pentagon line has, in this statement, is bearing its proper share of the depreciation that accrued because of the operations of that line.

Exam. MATTINGLY. Let us take a few minutes recess.

(Short recess.)

1052 Exam. MATTINGLY. Proceed, Mr. Davis.

By Capt. DAVIS:

Q. Mr. Heberle, to the extent that an equalization of fares between your company and the Virginia companies reduced the peaks on your link, would that have the effect of cutting down the unit cost per passenger mile to and from the Pentagon?

A. Well, all of that business, Captain, is peak business in Pentagon, and I would not think that your cost per mile would be reduced.

Mr. WHITTLESEY. The Captain said per passenger-mile.

The WITNESS. Did he say passenger-mile?

By Capt. DAVIS:

Q. Per passenger-mile.

A. Well, per passenger-mile is a statistical thing not readily handled, Captain, because I don't think it means anything. It can't be determined. I really can't think through a passenger mile.

By Mr. DUNLOP:

Q. Mr. Heberle, if it had any effect whatever, it would increase it?

A. I have got to give the same answer when you come to passenger miles. I would just as soon not try to throw any mental girations on that because it is a statistical thing that is too much for me, and I have had a lot to do with street railway statistics during the last 30 or 35 years.

By Capt. DAVIS:

Q. In other words, you don't think the last column on
1053 Exhibit 89 means anything. It shows the loss of three cents per passenger.

A. There is nothing on my Exhibit 89 that has anything to do with passenger-miles. It has per passenger, which is quite different.

Q. All right. That is per passenger for that trip, then?

A. That is right.

Q. Which is the same thing as passenger-mile except that——

A. Incidentally——

Q. This is times the number of miles.

A. Incidentally, with respect to passenger-miles, I will say this, that on this particular operation, Pentagon, if you make certain assumption—here is one case that you can get, but I understand after listening to passenger-miles as discussed in this hearing, I understand this is one case where you could get passenger-miles on this operation, but you can't get anything to compare it with.

The reason that you can get it on this operation—you would have to make the assumption that everyone rode—all passengers rode the same distance, and one assumption and probably the fairest assumption is that no one road in the opposite direction, or, if you had the number of revenue passengers, and you knew that the average ride—I don't mean the average ride—the actual ride of each passenger was 3.5 miles, if you multiply the number of passengers by 3.5 you would get a figure that you might term passenger-
1054 miles. But there is just—that is because of the units necessary on this particular operation, where it is a ride between Point A and Point B, and you must assume, and I think it is a proper assumption in this case, that they all take that ride, but when you get through, you have a figure that you can play with, but you can't make any comparisons, and it is not a figure that is used, so far as I know, in any—in making comparisons with other operations, or even in attempting to get a figure for an over-all operation on any property that I am at all familiar with.

Q. Now, suppose the peak was reduced by virtue of using some of this excess capacity, would that reduce the alleged net loss

shown in this exhibit of yours, No. 89, if all the other assumptions were the same?

A. Are you thinking of that last column, Captain?

Q. Either the last column or the next to the last column.

A. Well, let us take the last column first. If you took off passengers and did not take off service to correspond with the number of passengers, you would increase your cost per passenger, and you would increase your loss. If you took off more passengers—I mean if you took off more miles, corresponding miles, than you took off passengers, that is, you provided more crowded accommodations on the busses, then you could reduce your cost per passenger, and you would to that extent reduce the loss over-all.

1055 Q. Would you also reduce the cost per bus-mile if you used fewer busses?

A. You might increase or decrease the cost per mile to the extent that you take off service. To that extent you would remove completely the direct costs that attach to that service, and if you reduced the number of miles that you run in there, you would also reduce the pro rated expenses by a corresponding amount, to the miles.

Q. Would the depreciation be reduced in proportion to the number of miles?

A. No; the depreciation would be reduced in proportion to the elimination of busses from the service.

Q. And that would be more than the proportion of miles, would it not?

A. No; it might be less; it might be the same. We are speculating, Captain, too much. I don't think I can give any useful estimate.

Q. In other words, there would be just as much speculation with that as in making up this exhibit in the first place?

A. No; I can sit here and speculate very easily, but there is a lot of work back of this exhibit in determining the costs and revenues, and so forth, attached to the operation.

Q. Mr. Heberle, you spoke earlier in your testimony about the difference in fare charged on the Q–2 and on the R–2 lines. Do you know the reason for that difference in fare?

1056 A. No; I don't know that I could, but I might make this observation with respect to what our comments before, Captain—this is not really responsive to your question now—and that is that if we were to assume that there were some persons who for a ride on Q–2 line to Pentagon without using any other service paid a District fare plus the Pentagon fare, the minimum fare that they would be so paying would be a token fare and 5 cents, would be 13⅓ cents, and it does not seem to me reasonable that there would be very much of that since the competing line, start-

ing from in the neighborhood of 11th or 12th and Pennsylvania Avenue and C Street gives the same ride for 10 cents. I don't think there would be many paying 13⅓ cents when they could go down the street and get the same ride for 10 cents.

I think that line is used by people who start their trip on the Capital Transit Company lines, and by means of transfer or weekly pass, use the Washington system of lines, and then use the Pentagon service.

Capt. DAVIS. Will you read the question back?

(Pending question read.)

Exam. MATTINGLY. Just a minute. Are you as an official of your company responsible for these fares, Mr. Heberle?

The WITNESS. No; I am consulted and talk over these matters.

1057 Exam. MATTINGLY. I thought that reason had been explained. I did not think it was necessary to go into it at this great length.

Capt. DAVIS. I understood that point was covered but since the man who covered it before is not here, I thought Mr. Heberle could go into it.

Mr. PRETTYMAN. The Examiner is correct. Mr. Merrill covered it very thor'ughly.

By Capt. DAVIS:

Q. There are no substantial differences in costs, just figuring that differential, are there, Mr. Heberle?

A. I don't understand that there is a differential. I would say there were no substantial difference in costs between Q-2 and R-2.

Q. Is there any reason then why a passenger should not be entitled to ride in the Q-2 line for 5 cents if he can ride on the S-2 line for that rate?

A. The Q-2 line has been established as a through line. That is the only reason I think, Captain.

Q. Well, if the part of a through line, if it is proper, it would be proper to accept the revenues and expenses and treat it as a separate operation.

A. I beg pardon.

Q. If it is a through line, is it proper to treat a portion of it as a separate operation?

1058 A. I think it is quite common to determine how much it costs to operate the Q-2 and R-2 lines.

Q. Well, assume the Commission can decide on that question, or other question, Mr. Heberle. Do you know how much money has been withdrawn from the Capital Transit Company during 1943 and 1942 for the benefit of the holding companies?

A. Well, there has been no money withdrawn from Capita Transit Company for the benefit of holding companies, unles you were to say—which is possibly true; I don't know—through dividends. There have been dividends paid by Capital Transi Company.

Q. Those dividends go to the holding companies, don't they?

Mr. PRETTYMAN. Go to the stockholders, Mr. Heberle?

The WITNESS. Yes, sir; they go to the stockholders, and if yo will tell me the companies that you refer to as holding companie so there won't be any difficulty, then I will tell you what I——

By Capt. DAVIS:

Q. I was referring primarily to the Washington Railway an Electric Company, and in turn to its parent holding company, th North American Company.

A. The Washington Railway and Electric Company hold 120,000 shares of stock for the benefit of its stockholders.

Q. 120,000 shares of stock of Capital Transit Company.

A. That is right.

Q. What percentage is that of the total stock outstanding

1059 A. That is 50 percent, and that is for the benefit of it stockholders. It has not up to this time been distributed to the stockholders of the Washington Railway.

Q. Who are the stockholders of the Washington Railway an Electric Company?

A. I am not familiar with their line. I know of one stock holder. We have heard much about the North American Com pany which owns some shares. I don't know how many. An then there are many other stockholders. But when I say man others—that is a general common knowledge, not particularly spe cific on my part.

Q. So to the extent that dividends are paid, they are paid to o set aside for the benefit of the—to a large extent—the North Amer ican Company.

Mr. PRETTYMAN. He did not say that at all, Mr. Captain Davi Don't twist what the witness said.

By Capt. DAVIS:

Q. Is that correct?

A. So far this year there have been two dividends of 5 cent a share—$1 a share paid by Capital Transit Company, and the were paid to the stockholders of the company in the proportion of the number of shares they hold.

Mr. QUIRK. Anything unusual about that?

The WITNESS. It is quite regular.

By Mr. WHITTLESEY:

Q. Was any of the money derived from the Pentagon operations?

1060 A. We have not been able to identify any.

Capt. DAVIS. That is all we have at this time.

Exam. MATTINGLY. Mr. Heberle, I have just a few questions.

By Exam. MATTINGLY:

This may be in the record; if it is, you need not bother to answer it. It is what this 7 percent return is computed on Exhibit 89.

Mr. QUIRK. Do you mind if I hear you, Mr. Examiner?

Exam. MATTINGLY. I am sorry, Mr. Quirk; I was merely inquiring as to the basis of this 7 percent return on Exhibit 89.

The WITNESS. It is computed on the number of busses used in Pentagon at an average cost of $11,286 each, and by the number of busses I mean this one-half figure that we have been speaking of for the month of July, as I recall, developing some 49½ busses, plus an investment in garage, garage buildings, that is based on our average investment in bus garage buildings here. It develops a figure of $1,351, and again that amount applied to the 49½ busses.

The same way with land; the land that is used on all of our busses, divided by the number of total busses owned and stored, and then that unit applied to this base number of busses, and the accumulated amount is—just a minute, please—the accumulated amount is $463,074 of investment and to that is applied 7

1061 percent, and the way that I have set it up here, I set it up for each month, got the annual dividend by 12, and finally accumulated 7 of those monthly proportions in Exhibit 89.

But it can be said to be 7 percent on $463,074 per annum. Is that clear, Mr. Examiner?

By Exam. MATTINGLY:

Q. Yes; in other words, it is the value of the property that is directly used in the operation, care and so forth of the busses that are in this Pentagon business.

A. Right, and is exclusive of a great deal of property that is indirectly used. There are just these three elements that I have considered in that return. I should have qualified that, too, because it is not a complete statement of all of the property that could be attributed to these busses.

Q. You could have made it a little higher if you tried?

A. I could have; yes. I could have made the depreciation rate 11.1 instead of 10 percent, but some of these things I was going through, and without attempting to comb the woods and find all the costs, that might be attributed to it.

Q. Now, there is just one other question. On Exhibit 89, in the bottom section there, administrative and general expenses, there is quite a large item for "Valuation expense"; do you know what that it?

A. The valuation expense on Exhibit 98 is $479, Mr. Examiner.

1062 Q. Well, wait a minute. Maybe I am on the wrong line.

A. The large one is injuries and damages, $259,000.

Q. I am sorry. I was reading the wrong line.

Exam. MATTINGLY. Any other questions?

Mr. LANE. Yes, sir.

By Mr. LANE:

Q. Mr. Heberle, there was some discussion brought about by Captain Davis a few minutes ago on this mileage to Pentagon. Your company buys its tires on a mileage basis, don't you?

A. Correct.

Q. And all of the mileage of all of the operations of the company are computed daily for tire purposes, is that correct?

A. That is correct.

By Exam. MATTINGLY:

Q. Would you explain that just a little bit more, by what you mean by tires on a mileage basis?

A. Yes, sir. We do not own the tires. The tires are owned by the contracting company and we pay for their use at a contract price per mile that is predetermined. That represents our tire costs.

By Mr. LANE:

Q. It makes no difference in the amounts you pay for those tires, whether the busses are in revenue service or not, does it?

A. No. For each mile that it runs we pay.

Q. It doesn't make any difference in the wages or other direct costs attributable to operations?

1063 A. All of these costs attach to the miles.

Mr. LANE. That is all.

By Mr. WHITTLESEY:

Q. Mr. Heberle, do you have Q-2 and R-2 set up on your books as one operation?

A. Yes, sir; we have certain statistics with respect to separating Q-2 and R-2, but cannot separate all of them, Mr. Whittlesey.

Q. So that when you say there is no difference in cost between Q-2 and R-2, you are actually saying, are you not, that you have one operating cost applicable to the overall picture? Is that what you mean, or did I misunderstand you?

A. I think that can be fairly said to be true. I don't know that I could separate a cost such as operators wages from the data that we have, between Q–2 and R–2, and yet that is one of those costs that you might think I might be able to.

Now, there are other costs that attach to both of them that I could not separate.

Q. Now, do you know whether there is any difference between the proportion of rented vehicles used in the Pentagon operation and the proportion of owned vehicles used in the operation?

A. As compared with what, Mr. Whittlesey?

Q. As compared with the total of your company.

A. The proportion of rented vehicles that have been ascribed here to Pentagon is a higher percentage of total rented
1064 than that that applies to our system as a whole, and comes about by the fact that studies that I made show that there are some of those busses used in Pentagon.

Q. Now, is your rental figure per bus mile lower or higher than your depreciation figure?

A. I have not made a direct comparison. I think that it will be found, if I were to make it, that there is very little if any difference. But that is a computation that could be made.

Q. Now, there was some discussion here about the question of depreciation being based on time. Can—Strike that question, please.

That is all I have.

Exam. MATTINGLY. Any other questions of Mr. Heberle at this time?

(No response.)

Exam. MATTINGLY. That is all, sir.

(Witness excused.)

Exam. MATTINGLY. Have you any more witnesses?

Col. BARRON. We have, as I indicated this morning, an analysis in progress which has been under way ever since Exhibit 89 was introduced. The expert will not be available until in the monring.

We have here, however, a number of our people that we can go ahead with cross-examination of any counsel who wishes,
1065 or we can go on and call others at this time.

Mr. QUIRK. I suggest we try to bring this hearing to an end some time.

Exam. MATTINGLY. Well, that is what we are trying to do.

Mr. QUIRK. I have not got that impression at all.

Exam. MATTINGLY. We will recognize the effort when we see it. Does anyone wish to cross-examine any of the previous witnesses that were called?

Col. BARRON. We will be glad to bring them in at any time.

Mr. PRETTYMAN. We have already indicated we would like to ask a few questions of Dr. Franklin.

Col. BARRON. We have sent for him.

Mr. QUIRK. Col. Barron asked Mr. Mitchell, our witness, when he was on the stand this morning, for information about possible increase in wages and what it would amount to per month. We can put that in the record now.

Exam MATTINGLY. All right. Let us do that.

Col. BARRON. I am willing to take his statement.

Mr. QUIRK. Well, I find that it requires just a little explanation. Will you take the stand again, Mr. Mitchell?

This is in response to a question by Col. Barron as to what the wage increase that you spelled out in cents per hour
1066 this morning would amount to or might amount to per year or per month if approved.

ROBERT T. MITCHELL, recalled and testified as follows:

REDIRECT EXAMINATION

The WITNESS. We have been able to compute from the records that the increase in hourly rates on a like number of hours per day being operated at the present time would be a minimum of $83,000 a year additional cost.

In addition to that there is no consideration given in that calculation to overtime pay, that is penalty pay for overtime work which we have had in no previous contracts.

The contract which is now before the War Labor Board provides for overtime pay for both operating and maintenance personnel. In addition to that, the contract calls for a lessening of time for bus operators to reach maximum pay. That will result in some bus operators moving up from 78 cents an hour to 97 cents an hour during the contract year.

The best estimate we can make at the present time is that those total costs will run somewhere in the neighborhood of $125,000 to $150,000 for the year June 18, 1943, to June 18, 1944.

And I would like to correct a statement that I made this morning, that that contract expired May 18. The date was June 18, 1943.

1067 Re-cross-examination by Col. BARRON:

Q. This is an estimated annual figure that you are giving here?

A. The $83,000?

Q. $83,000.

A. $83,000 is actual out of pocket money expected if the contract is approved by the War Labor Board.

Q. For the annual period you have mentioned?

A. That is correct. It is an annual figure; yes.

Q. And you anticipate other increases which may bring it up to this other figure.

A. That is correct. As a matter of fact, due to manpower shortage at the present time, the overtime is increasing faster than we even anticipated. It becomes necessary to work men overtime more frequently now than ever in the past.

Col. BARRON. That is all.

Mr. QUIRK. That is all.

(Witness excused.)

Col. BARRON. We have I think a few more questions from Mr. Kosh at this time, if the Examiner please.

Exam. MATTINGLY. All right.

D. A. KOSH recalled and testified as follows:

DIRECT EXAMINATION

Capt. DAVIS. I might say we are calling Mr. Kosh at
1068 this time to cover a point which has been injected in here and we believe it is totally irrelevant, but inasmuch as it has, we want the whole story on it, and I refer to this report of the so-called Washington Regional Committee on Defense Transportation.

Mr. PRETTYMAN. Is it a so-called committee?

Capt. DAVIS. Some similar name; I am not sure of the name or the importance of it either, but there is some testimony in the record about various reports and recommendations which that committee made.

By Capt. DAVIS:

Q. Mr. Kosh, did you hear some of the testimony concerning the activities of that committee, and a recommendation for a fare readjustment which they made?

A. Yes, sir.

Q. And during your service with the Office of Price Administration did you have some contact with that report?

A. Yes, I know that report.

Q. Can you tell us about it?

A. Yes; that report was submitted to us for sort of a preaudit, as was testified to previously in the case of a rate change resulting in an increase in rates. Notice has to be given to OPA and also consent obtained, and I believe the idea was if there was anything in that proposal that the OPA would object to and as a

result intervene and force a formal hearing, they wanted
1069 to know about it, or at least clear that hurdle of the OPA nonintervention agreement.

Q. When you say "they," whom do you refer to?

A. I think the report and the proposal came to us directly from the committee. I think it was over the signature of Mr. Lovejoy, if I am correct.

Q. What position has Mr. Lovejoy?

A. I think it is secretary of that committee. I am not sure whether it was directly from him, but we had all the reports filed with us.

Q. He is executive secretary of the Washington Regional Committee of the Defense Transportation, is he not?

A. I believe that is correct.

Q. And what happened to that report when it came before your office?

A. That report was submitted to me for analysis since it involved to a very large extent the Pentagon operation. We asked that the War Department give us some information on it.

The upshot of that request was that Major Ristroph made an analysis of that report and submitted that analysis to us. The report as sent to us indicated that if the plan were adopted that there would be a saving to riders to the military installations, of around $180 or $190 thousand; I don't remember exactly.

Major Ristroph's report indicated——

1070 Mr. LANE. We will object to anything Major Ristroph's report indicated. If the report is to be introduced, we suggest it be introduced not from this witness' memory.

The WITNESS. Let me put it this way.

Mr. LANE. We will object to any conclusions drawn from any report when the report itself may be introduced. If you want to put it in, we have no objection. We want the reports in and not oral testimony as to what they contained.

Mr. WHITTLESEY. I think that would be particular so insofar as the statement——

Exam. MATTINGLY. We do not need argue further about it. Will you put that report in?

Capt. DAVIS. Yes, sir.

The WITNESS. Without mentioning dollar amounts, then, the proposal indicated there would be a very substantial saving in costs to people riding the facilities to the military installations.

The analysis of that report indicated there would be no saving, but actually an increase in expense.

Mr. LANE. I move the answer of the witness be stricken from the record as not responsive and not in accordance with the rules.

Exam. MATTINGLY. The report will be submitted, and if the statement of the witness is at variance with the report, it can be disregarded.

1071 By Capt. DAVIS:

Q. Do you mean your analysis?

A. No, the analysis received from Major Ristroph.

Mr. QUIRK. Who made this analysis?

The WITNESS. Major Ristroph.

Mr. QUIRK. Why put this witness on the stand?

Capt. DAVIS. Because that is incidental to what he is going to testify to.

Exam. MATTINGLY. Let us proceed.

The WITNESS. After we got the report, we communicated with the regional committee and told them what the situation was and suggested that they could come over and we would hold a conference on this and find out how we can straighten out this discrepancy.

By Capt. DAVIS:

Q. Who was represented at the conference?

A. As the Administrator, Dr. Kieser, Mr. Booth, chief, Public Utilities Branch; I was there. I believe Mr. Deale was there. Mr. Lovejoy was there, I remember, and certain other members. I think Senator Burt and one or two other people, I don't remember exactly their names.

At that time the question was why the difference, one a saving and one an increase. The conference lasted about five minutes. The members of the committee said that they would like a copy of the analysis, at which time they said they would explain the difference, and the impression was that there would really be a saving.

1072 They did not have a copy of the report. We promised to get one for them.

Q. Copy of which report?

A. Major Ristroph's report. That report was submitted to the committee, and we have not heard anything further about that proposal.

Cross-examination by Mr. WHITTLESEY:

Q. What was the date of that conference?

A. At least two months ago. I am not sure about that.

Q. About two months ago?

A. I think it was about that.

Q. What was the date of the conference in relation to the first notice in the newspapers that there would be an ICC hearing?

A. I don't remember.

Redirect examination by Capt. DAVIS:

Q. So after this committee promises to supply you with additional information——

A. No, that is not right. The committee did not promise to do any thing. They just said they would analyse the report and keep us advised. They did not promise to do anything specific.

Q. You received no further analysis from them.

A. Up to date I have the file on my desk and there has been nothing added to it.

1073 Q. Has there been any further request from the OPA that that committee give further consideration to the proposals made in that report?

A. If there have been at the OPA, not that I know of.

Q. If there had been would it have come to your attention?

A. That is right.

Capt. DAVIS. That is all.

Exam. MATTINGLY. Any further questions from Mr. Kosh on this phase of his direct?

Mr. QUIRK. I have none.

Mr. LANE. We have none.

Exam. MATTINGLY. You are excused.

(Witness excused.)

Col. BARRON. We have Dr. Franklin here. Mr. Prettyman wanted to cross-examine him.

Exam. MATTINGLY. Dr. Franklin.

EDWARD E. FRANKLIN recalled and testified as follows:

CROSS-EXAMINATION

Exam. MATTINGLY. Are you ready, Mr. Prettyman?

Mr. PRETTYMAN. Yes, sir.

Exam. MATTINGLY. Go ahead.

Mr. PRETTYMAN. I have only a very few questions.

By Mr. PRETTYMAN:

Q. On Exhibit 23, Doctor.

A. That is Table 12, is it?

1074 Q. Yes; Table 12.

Now, you have listed there in group C, accessible locations, and I think you said the other day that you considered inaccessible the finance department or division or whatever you call it.

A. And the Quartermaster.

Q. Now, the finance division is located at 801 Exchange Place Northeast, is it not?

A. It is located several places; it is scattered.

Q. Isn't that the principal one?

A. At the moment; I am not familiar with the actual distribution of personnel. But certainly that is one important part of it, I reckon.

Q. And that location is served by a streetcar and bus, is it not?

A. I think so; I am not too aware of it.

Q. And the people out there travel on a reverse flow of traffic; isn't that correct?

A. I am afraid I don't know too much about it to answer that.

Q. Well, I mean they are moving in that direction when the majority of the peak and rush hour are coming back in this direction.

A. I assume that; I am not actually familiar with the facts.

Q. And the rate out at the finance, rate of separation, is 6.7 for the month of May, was it not?

1075 A. I can check that. I don't recall it. Correct. That is not just Exchange Place. Of course, I would like to make that point.

Q. Where are the locations of the finance department?

A. In part they are in War Department Annex No. 1.

Q. Where is that?

A. That is 23rd and C—D I believe it is.

Q. And that has both streetcar and bus transportation?

A. Near by. The bus is right there. The streetcar is at 19th Street, I believe.

Q. All right. That is in the District of Columbia, of course.

A. Yes.

Q. Now, where else is the finance department?

A. I don't know that I am sure at the moment. I think there is one or two other locations. Part of them have since that time been moved to the Pentagon.

Q. But not what we are talking about.

A. Yes; that would not affect this issue, but I mean in answering that—I am not sure that I could answer—that is, make an out-and-out statement that the finance people are located at just the following locations, without some check. I do know they are scattered.

Quartermaster is a more clearcut case, I think.

Q. But you treated War Department Annex at 23rd

1076 Street as an inaccesible place.

A. Treated finance as an agency which would come under this.

Q. You treated finance as an inaccessible location, didn't you?

A. Yes, sir; certainly; that is right.

Q. And among those locations is the War Department Annex at 23rd and C Streets.

A. That is true.

Q. And you can't think of any other locations?

A. No; I am sorry. I think I could get it for you from someone else.

Q. Now, are you familiar with a pamphlet that is published of which I have a copy here, entitled "Statistics on civilian personnel, U. S. War Office, War Department, Washington, D. C."

A. Yes, sir.

Q. May 1943.

A. Yes, sir.

Q. Mr. Cushnik, whose name is signed to that, is an official of the War Department, is he?

A. Yes, sir.

Q. Now, on page 13 of that pamphlet, it shows that of the total separations of 2,309, there are only 926 resignations; is that right?

A. That is right.

Q. Now, over on page 14, Table A, are the reasons given 1077 by employees for desiring separation; correct?

A. Those who were given interviews; yes.

Mr. PRETTYMAN. I would like to have a copy of this and ask that it be marked as—I am sorry; this one has some marks on it other than the printed part.

(Exhibit No. 99, Witness Franklin, marked for Identification.)

The WITNESS. I can get a clean copy.

Exam. MATTINGLY. Will you get some more copies?

Mr. PRETTYMAN. Yes.

By Mr. PRETTYMAN:

Q. Page 14 of that pamphlet, there is a table "Reasons given by employees for desiring separation"; correct?

A. That is right.

Q. And out of those separating, 1,050 were given interviews.

A. That is correct. There are certain groups that are not—if I may explain that—if you wish that information.

Q. All right.

A. For instance, you will see on the table that you refer to on page 13——

Exam. MATTINGLY. 14.

The WITNESS. I am referring back to the earlier one; you are putting in the whole pamphlet as an exhibit.

On page 13, L. O. P. 766,000, such individuals are not interviewed at all. They are not operating so they are treated as separations, and I could go on and show you which ones are excluded.

1078 By Mr. PRETTYMAN:

Q. Of course, those that retired and died, they would not be interviewed, would they?

A. Correct.

Q. And those that were removed would not be interviewed to ask why they are leaving.

A. They are interviewed not to ask why they are leaving. I don't know whether this particularly is appropriate here, but the interview has several purposes.

Q. Those that are removed.

A. Are interviewed.

Q. All right.

A. If I may——

Q. Those that are on military furlough were not interviewed, were they?

A. There is a definition of who is and who is not in here if you care to use it. It might be simpler for me to quote that.

On page 15 there is a footnote there, and it takes care of the point "Originally." I will read the whole thing.

"Although Form CPOSWOS 715 requires that exodus interviews be reported only for those employees who wish to resign or to transfer to some other part of the government, sometimes it is found desirable to give exodus interviews to employees who are going to be separated from the department in other
1079 ways. Therefore, the base of this table is the total number of separations of the following types transferred out of War Department; resigned, dropped, removed, furloughs and others."

I should say that "others" really has a technical meaning here. It refers just to a limited group on temporary appointments.

By Mr. QUIRK:

Q. Does "dropped" mean "fired"?

A. I brought along, in case we need it, a Civil Service definition of two of the terms, "dropped" and "removed," in case you care to go into those.

Q. No; I don't care to.

A. All right.

By Mr. PRETTYMAN:

Q. Coming back to page 14, Doctor.

A. Yes, sir.

Q. The very second reason on the form that these people make out in the exist interviews is transportation.

A. Yes, sir.

Q. That page shows that for the month of May out of a total of 1,050 that were interviewed, 7 gave transportation as the reason for leaving.

A. Correct.

Q. Now, I will ask you about the figure for the month of June.

Mr. PRETTYMAN. Could this pamphlet for June be marked Exhibit 100?

1080 Exam. MATTINGLY. Yes, sir.

(Exhibit 100, Witness Franklin, marked for identification.)

By Mr. PRETTYMAN:

Q. On page 13, Doctor, of the June pamphlet are the reasons given, and that page shows there were 1,385 employees interviewed, and 10 gave "transportation" as the reason for desiring separation.

A. That is correct. I would suggest only one slight modification in both these tables, I mean as far as statistical correctness is concerned. Here No. 26, that is the last one, simply says "other reasons" and includes a large number of blanks.

Q. Yes.

A. I could get actual figures. I don't think it would be particularly important, that is, how the 500—out of the 500, 200 did not take trouble to give a reason. Now, the reason they did not give might have been transportation. That is the only point. Outside of that, that is statistically correct.

Q. If that is the best point you can make, that is all right.

A. All right.

Q. Now, on page 7 of that June report, Exhibit 100, in the narrative part of the report, there is a narrative paragraph devoted to reasons for separations; right?

A. That is right.

1081 Q. And transportation is not mentioned there, is it?

A. I should not think it would be because here we are dealing only with the groups, and transportation is just one of a group. There it is the community practice we are talking about.

Q. But they mention in the paragraph of the description, on page 7, they mention "Work factors given as reasons by 39; 4 percent of the men give proportional prospects as the leading factor and women continue to cite personal factors as most frequent, poor health being the leading factor."

It doesn't say anything about transportation there, does it?

A. Well, no; of course the answer is it does not. We are talking about big groups rather than minor ones.

Q. Well, now, we are talking about the big groups—there are three major groups.

A. That is right.

Q. Community factors, work factors, and personal factors; right?

A. That is right.

Q. And transportation falls under the general group of community factors, does it not?

A. That is right.

Q. And the paragraph of the descriptive narrative we are talking about says that the men give work factors; that is a
1082 second group; right?

A. That is right.

Q. And the women give personal factors; that is a third group.

A. That is right.

Q. So neither men or women mention community factors, which includes transportation according to the description.

A. Well, the work group includes 12 factors, and the community group only 6 factors, so mathematically it would hardly be expected to win.

Q. Now, transportation, Doctor, I assume covers all phases of transportation, such as distance, congestion, and other things, as well as fares; correct?

A. Unfortunately there has never been formulated a definition.

Exam. MATTINGLY. Before you get too far away from it in that community factor, there is one called "locality." What does that mean?

The WITNESS. I am afraid the same answer obtains. A number of people working in the War Department have objected to these just because they are not defined officially so that it probably means whatever any counselor wants it to mean.

By Mr. PRETTYMAN:

Q. It could be they don't like Washington?

A. Could be. It could be the section of the city. I don't think there is any one of us can say there is something wrong about the section or the whole section of the country. It
1083 has not been definited.

By Mr. WHITTLESEY:

Q. That pertains to locality as meaning a municipality or locality as meaning the Pentagon Building?

A. Well, I think the answer I gave could stand. There are no official definitions. These are promulgated by the Civil Service Commission without definition.

By Mr. PRETTYMAN:

Q. Now, Doctor, I believe you put in Exhibit 22, is that right?

A. That is right.

Q. Do you have that exhibit before you?

A. Table 11. I am sorry; I don't have the exhibit numbers on this separately.

Q. Table 11; that is correct.

A. Yes, sir.

Q. Now, as I understand from the footnote, this is a fair sample of the total group in the War Department or over at the Pentagon Building, or both or what?

A. It would seem to be a reasonably fair sample of the War Department as a whole. I think I explained in the original testimony how it was selected.

Q. And a reasonable sample of the people at the Pentagon Building in the same proportion?

A. Yes, sir.

Q. Now, on that top line, as I understand it, a man gets $1,200, his gross earnings are $62.50. The War Department
1084 deducts $8.80 withholding tax; correct?

A. That proved to be the average for the group. Now, of course the actual amount of withholding tax would depend upon marital status, and so on.

Q. That is right, but the maximum amount of tax that could be deducted would be a single person, would it not?

A. Yes, sir; without any dependents.

Q. Now, then, the War Department has an election as to the payment of withholding tax which it will take from the man's pay under the revenue statute, does it not?

A. I don't think I am qualified to give you exact information on that.

Q. Let us assume then that the War Department has an election. The revenue act requires only that the War Department deduct $7.30 from that man's pay envelope, does it not?

A. I am sorry; I am not familiar with the deductions.

Q. Well, if it be a fact that there is an election—you are not familiar with the provisions of the revenue act with regard to taxes?

A. Not well enough to testify on them. My financial section did all the work on this.

Q. Well, assume that the War Department could deduct under its election only $7.30 per pay day. That would be $1.50 difference between what they actually deduct; correct?

1085 A. Yes; I am assuming that.

Q. And that would be $36 per year; is that right?

A. Sounds all right.

Capt. DAVIS. He said he does not know.

The WITNESS. I don't know whether the original assumption is correct. I can check the arithmetic, but I don't know anything about the assumption.

By Mr. PRETTYMAN:

Q. Yes; then if that is the total figure, and if the War Department under the revenue act has an election, the War Department is deducting from those employees $36 a year more than it need deduct under the revenue act.

A. If it does. I would have to check the facts.

Q. If it has that election.

A. Yes; if those figures are correct. I don't have any knowledge of that.

Q. And that is more than 10 cents a day in round trip for each working day from the District of Columbia to the Pentagon Building which is involved in this case, is it not?

A. Yes.

Q. 10 cents a day per working day is $31.50.

A. Yes; six days a week.

Q. Since you are not familiar with it I won't go into these other figures.

A. No; I could get some one who is, but I am not.

1086 Q. Who did you get your figures from? You said you went through the pay roll, as I remember.

A. If you want the name of the individual, the financial secretary of the office; I don't know who it was.

Q. He gave me the exact amount of deduction in each case. This is simply the arithmetical average for each group that we have here.

Exam. MATTINGLY. Well, of course, if you don't know anything about it, there is no use going into it with you. I just notice the first four items there, more salary the person got, the less money was withheld. Doesn't that seem rather odd?

The WITNESS. Well, of course the person with the larger salary might have a larger family. Those first two samples very small.

By Mr. PRETTYMAN:

Q. The first two cases are obviously single people, because $8.80 is the maximum that could be deducted.

The first line, the fact is the revenue act gives the War Department an election, and the War Department under the revenue act needs only deduct from those people $7.30. That is, on its own election it is deducting $8.80 which is more than is involved in this case, as far as those employees are concerned.

A. May I ask whether that was based on the $1,200 or

1087 total receipts.

Q. Our figures.

A. Yes. I see.

Capt. DAVIS. We don't see that this is at all relevant but it is quite apparent if the deductions are not made, the employee has to pay the difference. It would come to the same thing, the following March.

Mr. PRETTYMAN. Quite the opposite, Captain. These employees that are paying $8.80 on that don't have to pay $7.30 by the War Department's own election are put to the trouble if they want to at the end of the year filing a claim for refund.

The only reason I bring it about is because of the extent of conversation about these poor people that are getting paid such low amounts and need this cash money, and since you put it in then it seems pertinent that the War Department, by its own election, could the money in its pocket.

Capt. DAVIS. If there is overpayment, it will be applied to next year's taxes, and they will have other income from war bonds, or otherwise, so that the tax comes out the same. It is just a matter of administrative convenience.

Mr. MATTHEWS. I think you will stipulate that the amount of deduction does not change the amount of taxes.

1088 Mr. PRETTYMAN. Oh, no; after a person has had too much deducted, he can go to the Internal Revenue, file claim for refund, and then when the Internal Revenue gets around to it get his money back.

Capt. DAVIS. It will apply on the next year's taxes.

By Mr. PRETTYMAN:

Q. Now, just one question there on that May pamphlet again, Doctor, if you please.

Page 11 of that pamphlet gives the individual department percentages of separation, does it not?

A. That is the Bureau within the department, you mean?

Q. Yes.

A. Correct.

Q. Now, as I understand it, the last one in the column, transportation, is over in the Pentagon Building; is that correct?

A. It was—again there have been some changes.

Q. According to your Exhibit 23 it is listed in the Pentagon Building.

A. Yes; I say that is changed too since then.

Q. What is the rate of separation for the transportation department, according to page 11?

A. 2.6.

Q. And that is as low as the lowest department in the District of Columbia, is it not?

A. I would have to check to answer that.

Q. Well, look back up the column and see if there is a
1089 lower one.

A. I think that is as low as any with the exception of the National Guard, which is so small that I waive it. It does not mean anything.

The Surgeon General is the same in D. C., 2.6.

I would answer your question affirmatively then.

Q. All right. Now, then, going back up one, you get the Signal Corps. That is in the Pentagon Building; itsn't it?

A. Almost entirely; yes, sir.

Q. And what is the rate of separation there?

A. 3.5.

Q. And that is as low as any outfit in the District except the Surgeon General, Engineers, and——

A. JAGO; that is right.

Q. Is that right?

A. That seems to be true. Inspector General is slightly lower, 3.4. That is in the District.

Q. Now, going up to the next one, Ordnance, 3.7, is in the Pentagon Building, is it not?

A. Yes.

Q. And over in the District, the rate on the Office of Procurement Services is 3.7?

A. Perfectly true; yes, sir.

Q. And the rate in the Provost Marshal General's office is 4.9. That is in the District, isn't it?

1090 A. That is correct.

Q. Now, according to page 8 of that pamphlet, the average rate of separation for the whole War Department was 5.3, was it not?

A. That is right.

Q. And that rate of separation over at the Pentagon Building according to your Exhibit 23 was 4.4. Right?

A. Excluding the Adjutant General's office, which, if you will remember, was about equally divided between——

Q. Yes; but what you computed on your Exhibit 23 the rate of separation for the Pentagon Building was 4.446; is that right?

A. Yes.

Q. That is lower than the average for the whole War Department according to the May pamphlet.

A. For the whole department of service.

Q. Yes.

A. But the rest of Virginia is considerably higher.

Q. Well, I am just interested in that, of course.

A. Yes.

Mr. PRETTYMAN. I think I have no further questions, but if we had a recess——

Exam. MATTINGLY. Well, does anyone else have any questions?

By Mr. HILL:

Q. Dr. Franklin, on your Exhibit 22, is that something which you yourself made up for your own reasons, or
1091 were you simply instructed to make it up and show all the items which you did show in there?

A. I was simply given the problem of finding out what the so-called take-away pay of various levels of personnel was. I simply set up my own means of getting this answer.

Q. Well, the problem put up to you was to take a reasonable sample through the wage levels and then show those earnings and the other deductions?

A. Well, as the problem was given to me, it was just to show how much money they actually take away in the pay envelope.

Q. You had no particular purpose of your own in showing those items?

A. Only to achieve that result, to show how much they actually had left.

Q. There is not your brain child?

A. I don't know that it is anybody's brain child. It just seems the only way to get that answer. That is certain amounts of base pay plus certain amounts of overtime minus so much.

Q. Do you know why you wanted that answer?

A. Well, I was simply given the problem of finding out how much the individual actually received.

Q. That is what I am driving at. As far as this case is concerned, you did not think that this would be relevant or
1092 material evidence? You had nothing to do with that, had you?

A. Well——

Capt. DAVIS. Well, wait a minute. It was not up to him to decide that.

The WITNESS. I was simply as a technician given a job of getting information.

By Mr. HILL:

Q. That is what I am trying to ask you, Doctor; just listen to me patiently.

You did not plan this exhibit; you simply went through the arithmetical computations; isn't that right?

A. I planned the procedure whereby I could get a certain picture.

Q. They told you they wanted to know what the total deductions were of a fair sample of the different salary levels?

A. Well, actually I think what I was told was that we would like to find out what this take-away pay is.

Q. All right. Then you wanted to get the take-away pay of a fair sample.

A. That is right.

Q. And you did that job and that is the extent of your interest in it; is that correct?

A. Yes; I think so; as well as I understand the question.

Mr. HILL. That is all.

Exam. MATTINGLY. Anything further?

By Mr. WHITTLESEY:

1093 Q. Dr. Franklin, is it your understanding that these employees whose salaries are here on Exhibit 22, do not have any right title and interest to the deductions specified as retirement and war bonds?

A. I don't think I have made any statement.

Exam. MATTINGLY. I think the answer is obvious. I don't know that we need to go into that. I think everybody understands. Employers are not giving that money away.

Mr. WHITTLESEY. All right.

By Mr. WHITTLESEY:

Q. During a recess did you ascertain whether the percentages illustrated on Exhibit 21 applied to the Pentagon Building?

A. No; I don't think so. I mean, I don't know of any specific reason.

Q. Are you able to state or are you unable to state whether the percentages illustrated on that exhibit are applicable to the civilian employees of the Pentagon Building?

A. Unable without an actual pay roll count. These figures, as you may remember, are practically a year old anyway; this percentage break-down is not had on the exhibit, and quite possibly may not apply—doesn't apply perfectly at the present time.

Q. Do you know the proportion of military personnel who have offices in the Pentagon Building as compared with the number of civilian personnel that have offices in the Pentagon?

1094 A. No; not precisely. The military district of Washington does keep such records, however.

Mr. WHITTLESEY. That is all.

Exam. MATTINGLY. Are there any further questions of Dr. Franklin?

(No response.)

Exam. MATTINGLY. You are excused permanently.

(Witness excused.)

Col. BARRON. I would like to ask of counsel to indicate what further witnesses they want so we can get them.

Mr. PRETTYMAN. I believe we indicated that the questionnaire be introduced so that we can examine them.

Exam. MATTINGLY. I don't understand a request was made.

Mr. PRETTYMAN. I understood a request was made, and I make a request then that the questionnaires are not to be put into the record, but they be presented here in the room so that we can look at them.

Col. BARRON. How many of them do you want?

Mr. PRETTYMAN. All of them.

Col. BARRON. Would it serve your purposes just as well to have as many as six men could carry?

Mr. HILL. Six men could carry 13,000.

Col. BARRON. Well, we will bring them over.

Exam. MATTINGLY. Mr. Hill, do you wish to have any of these other War Department witnesses present for cross-
1095 examination tomorrow?

Mr. HILL. Yes; I want Major Ristroph; by all means.

Exam. MATTINGLY. Off the record.

(Discussion off the record.)

Exam. MATTINGLY. On the record.

We will recess until 9:30 tomorrow morning.

(Thereupon, at 4:45 o'clock p. m., a recess was taken until Tuesday, September 14, 1943, at 9:30 o'clock a. m.)

1096 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM B,
INTERSTATE COMMERCE COMMISSION BLDG.,
Washington, D. C. Tuesday, September 14, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Before G. H. MATTINGLY, Examiner.

Appearances: (As heretofore noted.)

1098 PROCEEDINGS

Exam. MATTINGLY. Please come to order, gentlemen.

Col. BARRON. They want to cross-examine Major Ristroph.

Exam. MATTINGLY. Very well.

Major PAUL L. RISTROPH recalled and testified further as follows:

Exam. MATTINGLY. Gentlemen, Major Ristroph is ready for cross-examination if anyone has any questions.

Cross-examination by Mr. HILL:

Q. Major Ristroph, in your Exhibit 12, you show on the Rosslyn service a distance of a half mile between the Pentagon and the Navy Annex. Is that not a complete loop service?

A. Let's see; where is that, Mr. Hill?

Q. It is your last figure in the last column, showing 3.5 for the Navy annex; 3.0 for the Pentagon.

A. Those distances, I understand, were computed separately Mr. Hill. That is, from Rosslyn Circle to the Navy Annex, and from Rosslyn Circle to the Pentagon.

Q. Yes; but that is not the way the service is operated, is it?

A. Yes, sir; it is. Some of it is operated that way and some of it is operated through.

Q. Is it not a fact that the vast majority of it is operated as a loop service?

1099 A. I don't know the details of the service. It is my impression that quite a bit of it does serve both of them simultaneously. However, they have a staggering of hours there. The Navy goes to work earlier than the Army, and they do have some service which is operated exclusively to each building in turn. For instance, they pick up a full load at the Pentagon; they hit that first. They fill up. There is no need of going by the Navy. Or the hours may be different and they go back to Rosslyn shuttle.

Q. Have you made a check to determine how many are running the loop service and how many are running to either building?

A. No, sir; I have not.

Q. Then you don't know that the vast majority are run as a loop service?

A. That is my impression, Mr. Hill, from past experience and talks with the representatives of the A. and F. and similar data, but I don't know the numbers.

Q. All right. Well, you agree, do you not, that there on the loop service the difference in distance should be about 1.7 miles?

A. We have that difference in here somewhere. I think it should come to that.

Q. Well——

1100 Exam. MATTINGLY. That is the difference between what?

Mr. LANE. Pentagon Building and the Navy Building.

The WITNESS. If you just take that line direct.

Exam. MATTINGLY. That is the distance from one of those buildings to the other.

The WITNESS. That is right.

Mr. LANE. That is right.

The WITNESS. But if you go to them individually the distance is somewhat shorter because you cut across.

Mr. HILL. You will notice, Mr. Examiner, immediately previous to the figures I quoted, the figures show 1.2 from Pennsylvania Avenue to the Bridge; the distance is 5.2 to the Pentagon and 6.4 to the Navy.

Exam. MATTINGLY. Well, I must be looking at the wrong exhibit. Are you talking about No. 12?

The WITNESS. He is talking about this, sir. See the distance here between the two buildings there in a direct line is about this 1.2, or something like that, but these other distances he was questioning these distances on arrival and shuttle. One is shown as 3 miles and the other as 3.5. That is direct distance, but not combining the two together. There is a triangle involved in it.

By Mr. HILL:

Q. Did you put in Exhibit 7, Major?

A. I have got to see what that is.

Q. It is a letter of June 16, 1943, addressed to Chairman
1101 Alldredge over the signature of the Secretary of War, with the initials H. W., Jr.

By the way, who is H. W., Jr.?

A. That is H. W. I.

Q. Or H. W. I.

A. Henry W. Isobel.

Q. Is he the Secretary of War we have been talking about so much?

A. The Secretary of War is the one whose stamped signature you see, Henry L. Stimson.

Q. Do any of these documents contain Henry L. Stimpson's actual signature?

A. These are copies. The originals containing his signature went to the places concerned. If that is addressed to the ICC, I imagine they have the original on file here

Q. Do you know who dictated this letter of June 16, 1943, Exhibit 7?

A. Well, it has Col. Isobel's initials on it. Usually some of those letters are also prepared for the signature of the Secretary of War—or those letters—are not dictated by any one individual, but clear through several hands.

Q. Did you dictate this letter ourself?

A. I had something to do with it. But it is not mine in its entirety, sir. I don't believe any one individual can claim the composition of the letter.

1102 Q. Do I understand from this letter that the questionnaire now reposing I believe in one corner of the hearing room contains returns from 86 percent of the employees?

A. That was 86 percent of those employees using peak hour service. That is the full number of questionnaire returns as balanced against *eht* total people riding during the peak hours.

Q. Well, are you now asking for a change in the fares only during peak hours?

A. I beg pardon?

Q. Are you now asking for a change in these fares during peak hours only on——

Col. BARRON. I object to the question as being improperly directed to this witness.

Mr. HILL. The witness composed this letter.

By Mr. HILL:

Q. Why did you confine it to 86 percent of the employees?

Col. BARRON. That is a matter for the Secretary of War.

Mr. HILL. Let us subpoena the Secretary of War and bring him over here. I doubt if he has ever heard of this proceeding.

Col. BARRON. I move to strike that remark as improper.

Exam. MATTINGLY. That remark will be stricken.

By Mr. HILL:

Q. Will you tell me, Major, why in this letter it is con-
1103 fined to 86 per cent of the employees traveling during peak hours?

A. There is no particular reason except that is just how the figure came out. We had a peak hour check at that time. It has since been supplemented.

Q. It is your understanding then that no other employees than those moving during peak hours are concerned, to use the language of the letter.

A. Such is not my understanding, Mr. Hill.

Q. Then this letter is incorrect from the Secretary of War to the Chairman of the Commission.

A. Not to my knowledge, sir.

Q. Then how do you reconcile the statement that you have signed reports from 86 per cent of the employees concerned, but that actually it is 86 per cent of the employees riding during peak hours? Is this to be a favorite class? That is what I want you to tell me.

A. No, sir; the reason why the peak hour check was taken is because they had the majority of the people traveling at the peak hours. That is a peak hour service, as you heard testified here before, and that is the reason why we were particularly concerned with the peaks.

Q. Well, you concede, do you not, that Exhibit 7 should be amended if that is a fact?

A. I don't know as it should, sir. You might expand that on the basis of the 24-hour count, if we had that data at that
1104 time, which we did not have. It could be done now. But I do not see that it could serve any specific point.

Q. Well, the employees who travel during the off hours are concerned, aren't they?

A. As far as my understanding of it, everyone is concerned.

Q. Yes. All right.

Now, turning again to Exhibit 12, are not many of the distances shown on Exhibit 12 and there described as transit distances by way of streetcars?

A. Some of them are, sir, and I believe I may anticipate your question, not to the distance alone of the streetcar. That was an approximation. To travel to the nearest route and these are speedometer distances.

Q. Are there any other questions I have in mind you would like to answer before I go ahead?

A. No, sir. If I am presuming too much, I am sorry.

Q. Now, will you pick out the ones on Exhibit 12, which are streetcar points served by streetcar only?

A. I am afraid, sir, I could not do that from memory. I would have to get a map to do that.

Q. Well, how was this exhibit made up?

A. It was made up from these different mileage tabulations that were taken. Would you like for me to go into the details of how it started and trace the whole procedure?

Q. I will reach the detail. How did you pick the D. C.
1105 line on Conduit Road, the first point shown in your exhibit?

A. That was picked at random, sir, as one of the outlying points.

Q. Well, who picked it?

A. I could not say exactly who picked that one particular point. Perhaps I had something to do with it.

Q. Did you personally select any of these points as representative, or as anything else you might choose to call them?

A. As representative of what, sir?

Q. Representative of whatever you are trying to show in this exhibit.

A. This exhibit merely shows the distances as close as we could get them between these selected points and the buildings concerned, sir, and for that particular point these distances are the distances as close as we could get them.

Q. Well, now, you are responsible for this exhibit, are you not?

A. Yes, sir; it was done at my direction.

Q. All right. Now, who directed the selection of the points shown? That is all I want to know.

A. Those points, the selection of those points were under my direction, after consultation with counsel. The immediate picking out of the individual points, some of which I did and
1106 some of which were done by Lt. Gatling, who actually traveled the distances.

Q. Are you at all familiar with the lay-out of busses and streetcars in the District of Columbia?

A. Generally so.

Q. How long have you been a resident of the District, if you are?

A. I am not now a resident of the District, sir.

Q. How long have you been stationed in or adjacent to the District?

A. Stationed since October of 1940, and prior to that time I lived in Washington some nine months.

Q. Do you know where the D. C. line of Conduit Road is?

A. Yes, sir.

Q. Where is it?

A. It is generally parallel. Conduit Road runs generally parallel to the Potomac River, and upstream of the river.

Q. Now, what was your particular purpose in picking that point?

A. These—each of these points were picked to show the distances from that particular point to the locations concerned, sir. That was just one of the points.

Q. You just went around the District and picked out points here and there; is that it?

A. That is right, sir.

Q. Now, you say you can not tell me which ones are
1107 served by streetcar only?

A. Not unless I look at the map. I don't recall it from memory.

Q. What map do you mean? A map of the transit company?

A. Yes.

Q. Then the distances where you start with the intersections which are served by streetcar are computed by the shortest route you can find by either streetcar or bus or a combination of both; is that correct?

A. Let's see if I understand that. You mean the transit distance is the shortest that we could make them using the transit facilities?

Q. You have got transit distances on your exhibit. On your very first one you start from the D. C. line and Conduit Road.

A. That is right.

Q. You show a distance of 10 miles "Temporary Y. N. Armory," whatever that is. Where is that?

A. East Capital.

Q. How did you compute that distance of 10 miles?

A. That distance was computed by taking the speedometer readings from these points concerned following the transit lines, and as closely as we could with the vehicle on out to the points concerned.

Q. Did you do that yourself?

1108 A. No, sir; I did not.

Q. Have you any idea what way they went to figure this distance?

A. They followed the established transit lines on that particular point in the most practical manner, the closest manner that they could.

Q. All right. What were those lines on that particular point?

A. I think it is—I have to trust to my memory on this thing—that is Cabin John streetcar line runs out there to that point. I don't know the name of the other streetcar that goes along out there, but does make connections with that line in the northwest section of the city, and it goes to within, I think, two or three blocks of Temporary XNY.

Q. Is that streetcar all the way on that?

A. I believe that is correct, sir.

Col. BARRON. Capt. Loughran tells me that they have a detailed table showing the lines they traveled and where all the lines went to, and we will be glad to get them, if counsel wants them.

Mr. HILL. Let's see how much the witness knows about it.

By Mr. HILL:

Q. Do you know whether there are any combinations in here made up of more than one streetcar and more than one bus in making more than one change?

A. Offhand, sir, I could not say whether it is—they made
1109 these, and there may be some in this included, but I could not say specifically.

Q. Would you consider that a shortest possible combination even if it runs up to a dozen different lines?

A. That is right; it may be in there; I don't know.

Q. That was your purpose in making the exhibit, to show the shortest possible distance?

A. Yes, sir; the transit distance—the transit line that would normally be used in going from these areas to the other areas.

Q. Just one more question. The third item on here shows the District line to Wisconsin Avenue. How is that served, by bus or streetcar?

A. Again I would have to refer to the map, Mr. Hill.

Q. Well, I will enlighten you. It is served both by streetcar and bus.

Now, do you know which way you computed it, by streetcar or by bus, to start off?

A. Whether that distance was computed by streetcar or bus?

Q. Yes.

A. All I know is that the transit line was taken. I don't know whether it was streetcar or bus. However, I have my assistant who prepared this thing in detail, and ran the various lines, and will be glad to produce him if you wish to get this further detail.

1110 Q. You don't have any very great knowledge of this exhibit, do you?

A. I believe I have, sir.

Q. Your assistant did all the work.

A. He did most of it.

Q. Where is Barney Circle?

A. Barney Circle is in the eastern portion of the town.

Q. How is that served?

A. To the best of my memory it is served by bus.

Q. Now, on the matter of the District of Columbia fares, you agree, I assume, that there are only two bases, group bases?

A. What do you mean by group bases?

Q. Applies over the District of Columbia.

A. The District fares to my understanding apply all over the District of Columbia.

Q. Now, the same fare covers the distances shown on Exhibit 12 in the distance of one city block, does it not?

A. That is right. That is my understanding, regardless of distance.

Q. Did you make any effort to determine weighted average distance of passenger traveled within the District of Columbia on Capital Transit?

A. Only for those people who are employees of the War Department located in the buildings in adjacent Virginia. That was done under my direction, but not done by me personally.

1111 Q. Now, I will ask you again did you make any effort to ascertain the weighted average distance traveled by passengers on Capital Transit within the District of Columbia?

A. I replied, sir; I did that in a limited manner. Those that applied to the War Department establishments but not for the general passengers of the Capital Transit Company. I have no knowledge of that.

Q. And you made no effort to ascertain that, did you?

A. No, sir; I did not.

Q. Can you tell me how many pick-up or discharge points Capital Transit has on any one of the longer hauls shown on Exhibit 12?

A. No, sir; I cannot offhand.

Q. Do you know how many pick-up and discharge points the Arlington and Fairfax has on its routes to and from the Pentagon and the Navy Building?

A. I am generally familiar with them. I can't just pick them out of the air, because I have ridden those bus lines and used those bus lines, and know where the stops are located but just the exact number to pick out, I can't tell you.

Q. Very few in number, aren't they?

A. Yes, sir.

Q. On the other hand, the pick-up and discharge points on the route shown in your Exhibit 12 are very, very numerous,
1112 are they not?

A. I would assume that they are numerous.

Q. Well, now, you are familiar with the District. You know they are numerous, don't you?

A. Yes, but I can't—the words "very, very numerous" have some sort of a meaning that I don't know. I know that they have stops approximately every block. In some instances during recent times those stops have been spaced a little more and they may be as much as two blocks.

But in general you have numerous pick-ups on these lines, at very close intervals.

Q. Probably two blocks at most all the way from end to end.

A. There may be some more distant points in outlying regions; I don't know.

Q. On your Exhibit 14, Major, did you pick out two months?

A. Which is the Exhibit 14? That is the personnel?

Q. Table, yes,

A. Primarily to show—that is table what?

Q. Table 3.

A. Primarily to show what the population was at the time some of these studies were made, and at least what the population is at the most recent date that we could get at that time, to show any of the changes that have occurred or whatever use may be made
of them. We just wanted to give the accurate figures as
1113 far as we were able to obtain information for those months.

Q. All right. Now, was any effort made on Exhibit 14 to distinguish between military and civilian employees?

A. You mean as to division. For the May figure of 29,785 how many of those are civilians and how many are military?

Q. That is correct.

A. No, sir; I don't have that.

Q. Do you have corresponding figures for July?

A. They are both the same, sir. They are gotten up on the same basis.

Q. The military of course would have no say as to whether they should receive their connection with the Pentagon in any way, would they?

A. No, sir. That is, at least the military would have say as to the general activity, but if you are speaking of the individual soldier or something like that, or individual officer, they generally would not. It would be up to their superior.

Q. Now, under the Public Buildings Administration, I am looking both to the Pentagon and under Welfare Recreational Association, are there any of the military included in those figures?

A. No, sir; none of the military are included in those.

Q. Is it significant in your mind that in each case July shows a greater number of employees than May, where you have
1114 only civilian employees?

A. Let's see for Gravelly Point, it shows the same for two months for the total of Building Administration. The others do show an increase, as you have indicated there. No, sir; I have not gone into those figures or reasons for Public Buildings employment or the Recreational Association.

Q. Now, the Welfare and Recreational Association, what type of employee is that?

A. Those are mostly cafeteria employees, people having to do with the handling of food and preparation and serving of it.

Q. Do you know anything about the salaries these girls are paid who serve behind the counters in the cafeterias?

A. I have no detailed knowledge of that, sir. It is my understanding that it is relatively low.

Q. Very small salary plus meals while on duty, is that correct?

A. I could not comment exactly as to salary.

Q. Notwithstanding those very little salaries, the number of employees for the Welfare and Recreational Association increased July over May both at the Pentagon and Gravelly Point; is that correct?

A. That is right, sir. I might add, if you will allow me, that the Welfare and Recreational Association at the Pentagon at least, that the cost of transportation is not an item for those peo-
1115 ple, because their cost of transportation is paid by their employer.

Q. Why did you put them in here?

A. Because they are paid—they have to pay anyway. The pay comes out of it anyway.

Q. Who is the employer?

A. The Welfare and Recreational Association.

Q. Where does the Welfare and Recreational Association obtain its funds to pay them?

A. It obtains its funds from the—I imagine—I am not familiar with all of their things, but just in general that it obtains their funds from the proceeds they derive from the sale of meals and so forth.

Q. Their proceeds decrease with the amount of the bus fare.

A. I beg pardon.

Q. Their proceeds would be increased if the bus fare were lower then; is that right?

A. Not necessarily; the cost of meals could be lower.

Q. You are not suggesting that the bus company should lower the price of meals, are you?

A. I have made no such suggestion.

Q. What is the Public Buildings Administration? Are those the guards?

A. Yes, sir. Those are the guards and char forces.

Q. Not in military service at all, are they?

A. No, sir; they maintain those buildings for the military
1116 under the Public Buildings Administration.

Q. They pay their own fares, do they not?

A. To the best of my knowledge they do. I am not familiar with their arrangements.

Q. Do you have any idea what salaries are paid to the employees of the Public Buildings Administration shown on your Exhibit 14?

A. No, sir; I have had no occasion to go into that.

Q. In the population of the Pentagon and Graveley Point, is it being reduced by order of the War Department?

A. I have no knowledge of such an order. It would not affect me directly, sir.

Q. On Exhibit 15——

A. Which table number?

Q. That is your Table IV.

A. Excuse me while I get that. Table IV I don't know whether I put that in or Captain Loughran put that in.

Q. I have your name in connection with it.

A. But I am generally familiar with it.

Q. Is this based on the same returns to the questionnaire on which Exhibit 13 is based? Exhibit 13 was put in by Capt. Loughran, but can you answer that question? Whether the same questionnaire forms the foundation?

A. To the best of my knowledge this table No. IV, here, this
does not contain any element of the questionnaire with
1117 one exception, which I will come to. It is covered in a footnote there. It is based on an actual count.

Q. Major Ristroph, please answer my questions. Isn't that partly based on the questionnaire?

A. There is, sir; the Rosslyn Shuttle, a total of 638 passengers based on it.

Q. I will ask you for the details, Major. Let us get moving. We are losing time.

Isn't it based in part on the questionnaire?

A. The division of people is based on the questionnaire.

Q. And that is part of the exhibit, isn't it?

A. But the numbers are not, sir.

Q. Well, do you want to strike the footnote off there, then?

A. It could be, sir.

Q. Well, that is certainly a major contribution to the case if it could be stricken.

Now, in any event, what I ask you is whether that is the same questionnaire mentioned there as forms the foundation for Exhibit 13.

A. That is, sir.

Q. It is?

A. Yes, sir. Let's see. Exhibit 13 is a questionnaire return. It is the same questionnaire. There is only one set of questionnaires.

Q. Only one set of questionnaires?

1118 A. Yes, sir.

Mr. HILL. Incidentally, Mr. Examiner, at this point I want to make it plain that we do object to any exhibit based on any hearsay for the first reason that it is hearsay, that is the principal reason for it. We have no opportunity to cross-examine those on whose answers these exhibits are based.

Col. BARRON. They will be produced if you desire them at any time. They are available.

Mr. HILL. I object. If you produce 86 percent of those concerned, that will satisfy that objection.

Col. BARRON. Those who prepared the detailed exhibits are available.

Mr. HILL. Those who filled out the questionnaires I understand are not available. If you wish to make them available, that is for you to decide.

By Mr. HILL:

Q. Now, where were the counts taken on which this exhibit is based—No. 15 I am talking about now?

A. Those counts were taken at the Pentagon and at Temporary T-7, Graveley Point.

Q. They were taken at the Pentagon and at Graveley Point?

A. That is right.

Q. In every instance?

A. For this particular exhibit; yes, sir.

Q. Now, Major, am I correct in understanding that Exhibit 19—that is your Table 8——

1119 A. Let me get that, sir. All right.

Q. Am I correct in understanding then that Exhibit 19 is based on Exhibits 15 and 18? Do you want your numbers on those?

A. Yes; if you would, please, so I can check up on them.

Q. No. 15 is your No. 4?

A. That is the passengers carried.

Q. And your No. 18 is Table 7, which was introduced by Capt. Loughran?

A. Yes.

Q. Now, will you take this and tell me just how you arrived at these basic figures? I did not grasp your explanation.

Which, for instance, are based on the actual count taken in Exhibit—shown in Exhibit 15, and which are based on the returns to the questionnaire?

A. The numbers—for instance, you see in fare within D. C. general heading, you go on over to about August, where they have total, and under that they have "Number"; those numbers were taken from the actual counts and correspond to the actual number of people using those lines.

The breakdown of that total, into the various fare groups of classification, was made according to the data derived from these questionnaires, as shown on one of—this exhibit that you mentioned previously.

Q. Well, do I understand, then, that on "F" under division 1, 3,046 is taken from Exhibit 15, actual count?

1120 A. No, sir. The figure 25,581 is taken from the actual count.

Q. Where is that figure? I don't find it.

A. It is here, sir [indicating].

Q. Right here?

A. Yes, sir; these are the figures that were used.

Q. Well, now, show me where that appears on Exhibit 15.

A. Let me get my tables. That figure, Mr. Hill, that 25,581, is not shown on what I have listed here as table 4, and you have as Exhibit——

Q. 15?

A. 15. That is a breakdown taken on the basis of the questionnaires of the total figure, of 35—let's see—of 28,916.

Q. Well, what became of the rest of the 28,916?

A. They are over here in the rate of fare across the Potomac only. You will notice that for the total trip we have, our right hand side, over here, 28,916.

This is broken down into trans-Potomac only, and travel in the District plus Trans-Potomac. This is the figure here. The breakdown is derived from the questionnaires.

Q. Well, then, as I understand it, the actual totals you have used are taken from Exhibit 15.

A. That is right.

Q. But distribution is taken from Exhibit 18.

1121 A. That is correct, sir.

Q. Now, on Exhibit 20, Major, where do you obtain the figures for the present annual revenues of the several companies?

A. It is table 9, I believe, sir.

Q. Table 9; yes.

A. That, sir, is taken from the—what I have designated as Table 8, expanded total yearly figure. The number of days in that was computed as being 312.

Q. You mean you took your traffic count as shown on Exhibit 15, and multiplied it by 312 to reach——

A. No. I took these cost figures that I was able to obtain, on this other exhibit that you referred to.

Q. On 19?

A. That is, these cost figures here, and expanded them by 312 and put them on a yearly basis.

Exam. MATTINGLY. Now, you say "here." What exhibit are you talking about here?

The WITNESS. That is Exhibit 20.

Mr. HILL. Exhibit 20?

Mr. QUIRK. Table 8 is marked "Exhibit 19."

The WITNESS. All right.

By Mr. HILL:

Q. So you take the revenue for one day, multiplied it by 212?

A. 312, sir.

1122 Q. 312. And then in Exhibit 20 you give that figure for the Arlington and Fairfax, is that correct, $72,758?

A. That is the general line of procedure, sir.

Q. Now, on the 13⅓-cent ticket shown in Exhibit 20——

A. Yes, sir.

Q. What revenue do you calculate for Arlington and Fairfax, or how did you calculate it?

A. Which column? The present annual—no; 13⅓.

Q. Probable revenue.

A. Probable revenue; yes, sir. Would it be all right if I go back to my original daily so I can check it?

Q. Yes, sir.

A. That is for the Arlington and Fairfax. The 13⅓-cent ticket was applied to that line that originated at 12th and Pennsylvania. We took the number of passengers that they had there, and converted that to the 13⅓-cent rate. That is for those people who travel from different points in the District, use Capital Transit facilities, and then went over into Virginia. We used the 13⅓-cent rate.

For those people who got on there, at 12th and Pennsylvania, without having used any other form of transportation, that is Capital Transit Company transportation, we applied the same rate as they pay at present, 10 cents, because I understood that no change had been contemplated in that rate.

Q. Where, in this first column under 13⅓-cent ticket?

1123 A. Yes, sir. That is this—we had that for one day and then multiplied it again for your year.

Q. If that is the way you did it, give me the number of passengers you based on your 10-cent fare.

By the way, before you do that, where there is a 13⅓-cent through ticket, what portion of the revenue did you allocate to Arlington and Fairfax?

Exam. MATTINGLY. That is covered by note 1 on the bottom of the exhibit.

The WITNESS. That was an arbitrary basis, 50–50, so that we would have some means of doing it; otherwise we could not have prepared anything on it.

By Mr. HILL:

Q. All right. Now, go back to the previous question and see now. How many passengers did you have at a 10-cent fare and how many at half of 13⅓, and where did you get them from?

A. We took there all of these figures shown on Exhibit 19—that is, the passenger numbers——

Q. Yes.

A. For instance, at 10 cents, you had 250 and 8⅓, 338, and so forth, making a total of 1,816 people daily. That is people who used Capital Transit facilities and paid another fare in the District. Now, those were figured at 13⅓.

Q. Let's see if we can't simplify that.

A. All right, sir.

1124 Q. Some of your passengers opposite Arlington and Fairfax are assumed to have paid half of 13⅓, aren't they?

A. On which exhibit is that, sir?

Q. Still 20, Major.

A. All right, sir. Now, I was speaking from 19 just previously to that, sir.

Q. On Exhibit 20, half of the—some of the 35,873 passengers——

A. That is revenue, sir.

Q. Oh, that is dollars.

A. Yes, sir.

Q. All right. Strike that, Mr. Reporter.

A portion of that $53,873 is assumed to be made up of a number of 10-cent fares; is that correct?

A. That is correct, sir.

Q. And a portion of it is assumed to be made up at a fare of half of 13⅓.

A. That is right, sir.

Q. All right. How many passengers did you calculate for each and where did you get them?

A. From Exhibit 19, sir.

Q. Well, just give me the numbers.

A. The numbers?

Q. Yes, sir.

A. Using the 13½?

1125 Q. Using 13⅓.

A. 13⅓, at least, would be 1,816 passengers.

Q. All right.

A. The number who paid 10 cents only would be the difference between this figure of 2,332 and 1,816.

Q. 516.

A. That is right.

Q. At 10 cents.

A. That is right.

Q. Now, that is a daily figure.

A. That is right.

Q. And that is multiplied by 312 to reach your amount of $53,873.

A. That is right, sir.

Q. Now, did you get the figure of 2,332 from Exhibit 19 somewhere?

A. May I ask where that figure is that you are speaking of, sir?

Q. You are the one that gave me the figure.

A. No; this figure——

Exam. MATTINGLY. 2,332 is on Exhibit 19.

Mr. HILL. That is what I am trying to find out.

Exam. MATTINGLY. It is opposite A. and F. under the 10-cent fare under heading "Rate of fare across Potomac only."

Mr. HILL. I see.

1126 The WITNESS. That is right.

By Mr. Hill:

Q. Now, coming to the next one, the 5-cent trans-Potomac only, shown on Exhibit 20. There you simply reduce the revenue by half, is that correct?

A. That is what it amounts to. We took all the people who traveled on that line to get to the Pentagon and charged them with a 5-cent fare, and assumed that the company had collected that fare and would retain it, and would not receive any other compensation.

Q. Now, coming to the next one, the 10-cent joint fare, how did you calculate that?

A. Similarly to that calculated—the calculation is for the 13⅓, including those people who walked—who did not use Capital Transit Company, and rode only say the A. and F. The A. and F. would take the full 10-cent fare, just as they are getting at present, but the other would be divided, 50–50.

Q. Well, then, this 10-cent joint fare, you divided 5 cents to Capital Transit and 5 cents to Arlington and Fairfax.

A. That is right.

Q. I don't understand then why the reduction would not be 50 percent just as it is under the 5-cent trans-Potomac.

A. Well, because those people that are now not paying a fare to any company, or at least to the Capital Transit Company, but arriving are riding solely on your line would still
1127 pay that fare. There would be no change in that.

Q. Then are you still calculating 516 passengers at 10 cents?

A. The same number.

Q. The same number you figured under the 13⅓?

A. That is right, the same number of passengers applies all the way through.

Q. Now, in the column headed "Token or 10 cents" how did you divide the revenue?

A. The revenue was divided in the same manner. It was assumed that those paying a fare to the Virginia bus lines will only continue to pay that fare, and the others would pay a token or 10 cents on a Capital Transit facility, and then would be given a transfer or some other means to complete their ride on the Virginia bus company, and that fare was split 50 percent to Capital Transit and 50 percent to the Virginia company.

Q. I don't understand how you calculate the revenue as between 8⅓-cent tokens or a dime.

A. That is done on the basis of the distribution of fares reported to us on the questionnaires. Certain percentage of people use 10-cent fares, and a certain percentage pay a token.

Q. Yes. Well, then, Exhibit 20 also is based partly on the questionnaire.

A. That token or 10-cent distribution is, sir.

Q. Now, is your District fare, in the last column, done in
1128 the same way, on the basis of the questionnaire?

A. That is correct, sir.

Mr. HILL. Mr. Examiner, I don't think that the questionnaire is anywhere mentioned in connection with Exhibit 20. In any event I would like to have my objection run to Exhibit 20 because it is based on hearsay in part.

By Mr. HILL:

Q. Are you asking for any particular one of these bases of fares to Virginia or suggesting any particular one?

A. No, sir. I put them all in there for the information of the Commission, for whatever use they saw fit to make of them.

Q. On Exhibit 20, your last line, what number of persons do you use to arrive at the amount per person?

A. I would have to go back to one of the prior exhibits here and find out the number of people that use this transportation, but it is the total number who use that transportation.

Q. Taken from actual count?

A. From actual count, sir, that is it. That—let's see, per person—down here that includes all of the companies, and that should be based on 31,502. That is the number of passengers; 31,502 is the number of people you could assume would be half that number, because people have to go to and from work.

Q. Yes. Well, in meandering through this exhibit I apparently calculated that you must have used 15,752 persons.
1129 A. Which is half of that other figure.

Q. I don't remember where I got it from now.

A. That is where that comes from.

Q. Now, turn to Exhibit 33, Major.

A. Will you give me the table number on that?

Q. That is the form of questionnaire. That is the blank questionnaire.

A. Yes, sir. I don't recall whether I put that in or Captain Loughrain did on the questionnaire business. But I would be willing to explain it.

Q. Who prepared it?

A. That questionnaire was prepared under my supervision by myself and Capt. Loughran.

Q. Now, where was it distributed?

A. It was distributed at the Pentagon, and at Temporary Building T–7 at Gravelly Point, and some of different color, each building had a different color—some were given to the Navy for

their use, which I understood was used at the Navy Arlington Annex.

Q. You say these were distributed to those buildings. Where at those buildings?

A. To the personnel through the various offices.

Q. It was taken around to their desks, is that it?

A. I am not familiar with exactly how it reached individual persons. It was given to representatives in each depart-
1130 ment, and then a distribution from there on was by those people such as we have normal distribution all the time.

Q. It was not handed to them on the bus in any event, was it?

A. No, sir; it was not.

Q. How many of these were distributed, Major?

A. I don't recall. Capt. Loughran can testify better as to that, because he handled the distribution of it.

But I think it was in the neighborhood of something over 50,000, or something like that. I don't know.

Q. Now, how were the returns to the questionnaire returned to you, or to——

A. They were returned by hand, sir. They were consolidated in the various offices and returned in groups.

Q. Was any check made to determine whether the returns were actually by employees of the Pentagon or any of the other buildings?

A. Well, I have placed on the questionnaire which building and we checked that as we went along to see that that was not done, and we distributed only to the buildings, because they were the only people concerned.

Q. What percentage of the returns, Major, showed people not using public transportation?

A. The questionnaires were distributed to people who did use public transportation. We asked for no return from people who did not use public transportation. If they did
1131 use it, they were not required to submit a return.

Q. Why was this put in here asking that they check each facility used, and among facilities I find walking, own automobile, share ride, taxi, and others, which I assume is pogo sticks and bicycles.

A. That is the secondary means, sir.

Q. It is what?

A. It is a secondary means; the means used to get to these lines that physically carried the people to the Pentagon or to Gravelly Point, or these other locations. Some people walked, some used streetcars, some used busses, some come down in taxis, even.

Q. You mean that if they used this now and then or in one direction that you took their questionnaire?

No, sir. May I have the question over?

Q. Oh, you mean this is a supplemental means of transportation?

A. Yes; that is the transportation that they used in the District here. I think that is what you are talking about.

Q. In addition.

A. It is part of it.

Q. In addition to the bus travel.

A. No; in addition to travel across the river only; travel in the District. What means do they use for that travel, sir.

Q. Now, did you make any summarizations or resume
1132 of item K, the comments on bus service, right at the end of the questionnaire?

A. On K, Capt. Loughran took care of all the code figures and summarizations. I did not make those.

Q. Well, have you any idea whether any summarization was made of the returns to item K in Exhibit 3?

A. Yes, sir; we attempted a summarization on that.

Q. You have not put it in this record anywhere, have you?

A. No, sir; because the comments varied over such a wide range that it is pretty difficult to try to classify them to sort them by punch card system. They vary all up and down the scale. The examiner can easily see you get an innumerable number of classifications.

By Mr. PRETTYMAN:

Q. Major, as a matter of fact, wouldn't it be a simple thing to classify these questionnaires according to comments, excellent, the comment good, and then the comment poor, and then no comment, and then the ones that mention the fare? Now, that would be five very simple classifications, a perfectly simple thing on punch card to run that.

A. We attempted such as that, sir.

Q. Well, No——

Mr. PRETTYMAN. Go ahead, Mr. Hill. I don't want to butt in.

The WITNESS. Capt. Loughran testified to that, because he actually made it.

1133 By Mr. PRETTYMAN:

Q. He actually ran the computations on the comments?

A. On some of them anyway; I didn't do it, sir.

Mr. PRETTYMAN. All right.

By Mr. HILL:

Q. How many of the returns made comments on the level of the fares?

A. I don't know, sir.

Q. What are these hieroglyphics at the bottom of the exhibit, International Business Machine markings?

A. That is for the coding purposes; yes, sir.

Q. How many of those who made returns live outside of the metropolitan area of Washington?

A. That I could not answer. Capt. Loughran is better qualified to testify to that, sir.

Mr. Hill. I believe that is all.

Mr. Quirk. I have a few questions.

Mr. Lane. Are you going to continue on the questionnaire?

Mr. Quirk. No.

Mr. Lane. I have a few questions on the questionnaire.

By Mr. Lane:

Q. Major Ristroph, when these questionnaires were returned to your office, who did the correcting on them, you or Capt. Loughran?

A. Capt. Loughran in the most part was responsible for the coding. There were some few that there was some question about that I helped him out on, and I called up these people by
1134 their telephone numbers that they gave on there, and got any information that they had to give on that.

Q. Well, these changes that are made in the questionnaire in red pencil were made in your office?

A. I believe that is correct.

Q. In every instance was the original signer of the questionnaire consulted before the changes were made?

A. So far as I am concerned, they were. I called them up.

Q. Do you know about the balance that you did not correct?

A. No, sir; I don't know about the balance.

Q. Were your orders to Loughran to contact every one before the correction was made?

A. I didn't give him orders on that as I recall.

Q. Well, who gave him orders?

A. I gave him orders to get the tabulation up and left the responsibility to him to get it up in the proper manner.

Q. Did you review the tabulation made by Capt. Loughran regarding the comments made under K that you spoke that you attempted to make?

A. Did I review—what was that, Mr. Lane?—

Q. Did you review the purported attempt at a tabulation of the comments?

A. The classification that he intended to use? Yes, sir; I did.

Q. Did you review what results he did get?

1135 A. No, sir; I did not.

Q. Then you would not know what the comments were that predominated throughout the questionnaire?

A. If I remember correctly, we had a tabulation run off on that, Mr. Lane.

Q. Did you see it?

A. Yes, sir.

Q. That is what I just asked you and you said you had not seen any such tabulation.

A. I don't recall. If I made that statement it was erroneous.

Q. Well, have you any recollection of your own as to the proportion of the number of people who answered this questionnaire who mentioned fares, in their comments?

A. Offhand I don't. May I clarify something, Mr. Lane, about this thing?

Q. Surely.

A. I am not quite certain as to what the results were from this tabulation of comments.

Q. Well, is there anybody better in your office who would know?

A. I think Capt. Loughran would know those.

Mr. LANE. All right.

By Mr. QUIRK:

Q. Major, will you turn to Exhibit 12, your table No. 1?

1136 A. All right, sir.

Q. Now, Major, you have testified here that you had considerable experience in bus transportation.

Now, isn't it a common practice for transit companies to establish fares on a zone basis, that is, to zone a certain area and have a fixed fare, whatever it is, 5 cents or 10 cents?

A. That is a practice in many places as far as I am familiar with, but in the outlying regions. In the central regions they usually have one fare that applies.

Q. That is what I mean. In other words, it is not unusual for a place like the District of Columbia to have one fare that applies throughout the District.

A. No, sir.

Q. All right. Now, in the very nature of things, then, so long as you have that kind of a fare set-up, you are bound to have some people that get a lot more for their money than others.

A. That is right, sir.

Q. Well, would you think, for example, based on your experience, that because a person may travel on Capital Transit from Barney Circle to Temporary Building, only one mile and pay a 10-cent fare or an 8⅓-cent fare, and another person who travels

10 miles and gets that transportation for the same fare,
1137 that that makes the latter fare unreasonable?

A. That is about the only practical means of doing it. If we had tried to establish a rate of fare for each line and each distance traveled on the line, you would get into such a tangle that you never would be able to work it out.

Q. Well, it would be practically impossible to do that, wouldn't it?

A. I would say yes.

Q. Well, then, coming back to my first question, it just necessarily follows that wherever you have this sort of a system, there must be some boundary line.

A. Yes, sir.

Q. And wherever that boundary line is, the people over the line will seemly have to pay something that looks to them as unreasonable compared with the people within the zone.

A. Yes; I believe that is brought out.

Q. That is a natural reaction to it, isn't it?

A. Yes.

Q. Now, this exhibit, on the last column, Exhibit No. 12, says, "For district fare plus trans-Potomac fare" and you have in there from these various points to the Pentagon Building, Gravely Point, and Navy Annex.

A. Yes.

Q. Now, of course you did not mean by that heading to imply that any passenger that used any of these Virginia lines
1138 from their points of service within the District, the District fare plus another fare.

A. May I get that again? I want to be sure I understand it.

Q. Well, the heading of the column says, "For District fare plus trans-Potomac fare."

A. Yes.

Q. Well, now, you know that the A. B. and W. for example and the other Virginia lines served points in the District to these four Federal installations at one fare so far as they are concerned?

A. That is right.

Q. So that this exhibit in that respect is a bit, perhaps unintentionally, misleading, so far as it applies to the Virginia lines. They do not themselves charge an extra fare.

A. No, sir. It would not be accurate in all respects. It would be accurate in all respects except from this location at 12th and Pennsylvania Avenue. That is the location on the lower left-hand side, where it gives the mileage distances; those distances can be traveled for the trans-Potomac fare only in any intermediate points between that and these places in the District.

Q. At the moment I am not quarreling with the distances. I merely mean that the heading there indicates that for those
1139 distances there would be a District fare plus another fare. I am simply asking you, is it not a fact that passengers who use Virginia lines only pay one fare to these installations so far as the Virginia lines are concerned?

A. That is right, sir; from 12th and Pennsylvania or any intermediate point.

Q. All right. Now, on this exhibit you have one item, 12th and F streets, approximately the center of the business district, as that reads. Of course this exhibit only deals with distances, but getting back again to that problem, any passenger that moves from 12th and F by the Capital Transit and then pays another 5-cent fare would be doing something that there was not much reason for doing.

A. I grant that.

Q. So in other words, he could walk two squares to 12th and Pennsylvania and get an A. B. and W. or an A. and F. bus.

A. That is right.

Q. Now, will you turn to your Exhibit 18?

A. Yes, sir.

Q. I mean by Exhibit 18, your table 7.

A. Yes, sir. Capt. Loughran I believe put that in.

Q. What is it?

A. I think so; yes, sir.

Q. Well, it is really one of those cases where you can probably put all this in a brief, but I will ask only a few questions about it.

1140 Will you take my word for the fact—you can check it if it is not right—that that exhibit shows that out of 551 passengers transported from 12th and Pennsylvania Avenue in the District to Gravelly Point by the A. B. and W., approximately 34 percent paid a 10-cent fare, cash fare, instead of using a 7½-cent fare.

A. Let me check that.

Q. Well, it does show that, but assuming that that is true, that is all subject to counting——

A. Yes.

Q. What explanation have you as to that? Don't you think that indicates that the persons who use that are concerned with other things besides the measure or amount of the fare?

A. I think usually you find that to be true.

Q. In other words, it is hard to really understand just why people don't always economize, isn't it?

A. It is a matter of convenience in some cases. It is a matter of necessity in others. It is a matter of personal habit in others,

and in transportation you have quite a few habits that you carry over over a long period of time before adjustments are made.

Q. Now, this has all been tabulated and I am not going to take up the time to put all these details into this question, but have you observed that this exhibit shows that 40 percent—40.8 percent of the users of the busses did not see fit to [copy illegible].

1141 A. I don't recall exact figures, but I did note that, Mr. Quirk.

Mr. QUIRK. That is all I have; thank you.

Exam. MATTINGLY. We will take a short recess.

(Short recess.)

Exam. MATTINGLY. Let us proceed.

The WITNESS. Mr. Examiner, I would like to add one thing for completeness of the record, if I might. I was asked who prepared the questionnaires.

Exam. MATTINGLY. Yes, sir.

The WITNESS. Inadvertently I left out the Navy, because they were consulted and we had to make some changes after that consultation.

Exam. MATTINGLY. All right. Any other questions?

By Mr. HILL:

Q. As I understand, any questions on the compilations or resumes to these returns to the questionnaires should be addressed to Capt. Loughran.

A. Yes. I am generally familiar with them, but he has more intimate knowledge with them than I have, Mr. Hill.

Exam. MATTINGLY. Any other questions of Major Ristroph?

Mr. WHITTLESEY. Yes, sir.

Exam. MATTINGLY. Go ahead.

By Mr. WHITTLESEY:

Q. Major Ristroph, directing your attention to Exhibit 15——

A. Could you give me the table number on that?

1142 Exam. MATTINGLY. Table No. 4.

By Mr. WHITTLESEY:

Q. You show 394 passengers in the afternoon to the District over the W. B. and M. lines.

A. No, sir; that is the daily passengers, not the P. M. passengers. However, most of those—practically all of them are evening passengers.

Q. Well, what is the 3 there?

A. That is the 3 that—oh, yes; that 394 are all those that go from the District to the Pentagon and the 3 are those that came from the District to the Pentagon, sir. That would be a morning figure.

Q. Now, on Exhibit 17, Table 6, you report that——
A. May I have the table number?
Q. Table 6.
A. Yes, sir. That is Exhibit No.——
Q. 17.
A. All right, sir.
Q. You report 22 persons who, in response to the questionnaire stated they road the W. B. and M. lines.
A. That exhibit was put in by Capt. Loughran, I believe, sir. He has detailed knowledge of that. But that is what this table says.
Q. Did you see this table before?
A. Yes, sir; I saw the table.
Q. Well, now; 22 is only a very small percentage of 397,
1143 is it not?
A. That is right, sir; 22 out of 397—about 5 percent; a little better than 5 percent.
Q. So that the percentage of 86 as shown on Exhibit 7, the letter from the Secretary of War to the I. C. C. could not apply to the respondent W. B. and M. Company, could it?
A. That figure 86 percent, as I explained, applied to the over-all picture, and to the rush-hour traffic volumes alone. If it were to apply to the total sample or 24-hour period, it would be less.
Q. Do you know whether the W. B. and M. Company supplies service to the Pentagon in off peak hours.
A. To the best of my knowledge it does not, sir.
Q. So that if you had an 86 percent sample of the persons riding the W. B. and M. lines, you would have many more than 22, wouldn't you?
A. Yes. If I may point out, that 86 percent was an over-all and on some of the small lines you don't have as many as that. On some of the others you may have more than 86 percent if you break it down by individual lines.
Q. Well, in tabulating your questionnaires would you say that the law of averages that you apparently used would not apply to 400 out of some 10,000?
A. These figures speak for themselves. I can't expand on that. If 22 applied out of that, that is the number, sir.
1144 Q. But certainly the 86 percent in Exhibit 7 does not apply then to the W. B. and M. Company.
A. To the individual company; no, sir. You can very readily see that.
Q. Now, I call your attention to Exhibit 13, which is table 2, and ask you whether the name of the W. B. and M. Company appears on that exhibit.
A. No, sir; it does not.

Q. Well, is it only coincidence that you show a tabulation of 22 persons on Exhibit 17, and on Exhibit 13 you show a tabulation of 22 persons under the designation "Rosslyn shuttle"?

A. I could not answer that. I presume that it is. Capt. Loughran prepared the statement. He can answer that.

Q. Well, now, on Exhibit 17, you received a reply that 80 of those persons used a pass, is that correct?

A. That is what it states there.

Q. Now, turn over to Exhibit 18, which is table 7.

A. All right, sir.

Q. And tell us how many on that table are shown on that table reported using a pass.

A. For the W. B. and M.?

Q. Yes, sir.

A. In that particular tabulation it shows 7, sir.

Q. The other tabulations are 6 for token plus 10 cents.

1145 A. That is right.

Q. Three for 10 cents plus 10 cents.

A. That is right.

Q. And 15 cents only.

A. That is right.

Q. Making a total of 21.

A. That is right.

Q. Now, is it any reflection upon your tabulation to inquire as to why 3 persons having a pass in their possession would pay a higher fare?

A. I don't believe that that assumption necessarily follows.

Q. Well, let's start all over.

A. I might clarify the point here, if I may.

Q. Surely.

A. You are pointing out the apparent discrepancy between 7 people reported using the pass on Exhibit 18 and 10 on Exhibit 17, is that the idea?

Q. That is right.

A. Those were two separate tabulations, and two separate runs, I mean, of tabulations, and I would suggestion, if you have Capt. Loughran explain that, because we have discussed that, but he is better qualified to do that than I am. This is his exhibit.

Q. In other words, Loughran is responsible for both 17 and 18?

1146 A. Yes, sir. He introduced those.

Q. All right. Well, now, is Exhibit 19 yours?

A. Yes, sir; I introduced that one.

Q. You used the same ratios in Exhibit 19 that were used in Exhibit 18?

A. That is right, sir. This table—at least Exhibit 18 forms part of the basis of Exhibit 19.

Q. And you—by using that ratio, you magnified those 21 persons shown for the W. B. and M. Company on 18 up to a total of how many on Exhibit 19?

A. 397.

Q. So that if there was any error in table 18, it would be magnified by the relationship of 21 and 397?

A. That is correct.

Q. And then by using this magnified figure, as shown on Exhibit 19, you further expanded that on Exhibit 20, up to a year's annual revenue.

A. That is right.

Q. Is that your method of operation?

A. That is right. That is for the present annual revenue.

Q. Now, the present annual revenue on Exhibit 20 for the W. B. and M. Company is $12,386.

A. That is right; sir.

Q. At 10 cents straight fare, how many annual passengers would that be?

1147 A. You would have to multiply this by 10. It would be 123,000.

Q. So that you took the data applying to 22 people—21 people?

A. Yes.

Q. And by a series of expansions applied their answers to 123,000.

A. Yes; you might say that.

Q. And yet you say your questionnaire for 400 people is not representative out of 10,000.

A. Did I state that?

Q. Yes, sir; I think so.

A. I did not recall the statement.

Q. Well, sir; we will go back then and I will ask you again. Did you not state that because the W. B. and M. Company has a very small portion of this entire picture that your conclusions or averages with respect to 10,000 questionnaires might not apply to the 400 riders that are shown on Exhibit 15 as riding the W. B. and M. lines?

A. The record will state whatever I have stated, but it is my opinion, and I believe I stated that you have a difference in percentage, that 86 percent applied to the peak traffic and it was for all of the companies concerned: that the percentage figure did not necessarily apply to each individual company, and in this case the figure of 86 percent undoubtedly did not apply to the W. B. and M.

1148 Q. Now, if perchance there was error in tabulation No. 6, which is Exhibit 17—

A. I have that, sir.

Q. ——that error would be magnified, would it not, by each one of these steps of expansion that you took?

A. That is correct, sir; assuming, as you have.

Q. These 22 questionnaires upon which you based your calculations for the W. B. and M. Company are not segregated are they from the other some 9,900 questionnaires?

A. They were all intermingled.

Q. So that unless there was some lengthly effort made by someone just searching through these 10,000 questionnaires; it would be impossible to determine what appears on these particular 22.

A. It would not be impossible, but it would be impracticable, sir, to do it.

Mr. WHITTLESEY. That is all.

Exam. MATTINGLY. Any other questions of Major Ristroph?

(No response.)

Exam. MATTINGLY. That appears to be all, Major.

(Witness excused.)

Col. BARRON. Before Capt. Loughran goes on, there is one Navy witness here that I would like. He has only one or two questions to answer. I would like to put him on and let him go, possibly.

1149 Exam. MATTINGLY. Very well.

Lt. MATTHEWS. There has been some question raised as to where these people that work in these installation live and I happen to have a witness here that has some information on that which might clarify it.

Exam. MATTINGLY. This witness has been previously sworn?

Lt. MATTHEW. Yes.

Lt. EDWARD B. OLSEN recalled and testified as follows:

Direct examination by Lt. MATTHEWS:

Q. Lt. Olsen, does your Naval personnel have any information as to the residence of civilian employees of that bureau, taken as of recent date?

A. Yes, sir; we do have.

Q. Would you state briefly the circumstances under—and the reasons—for compiling this information?

A. In July, shortly after the annual efficiency ratings for civilian personnel were completed, it was thought advisable to send a personnel letter to each employee, either commending him on his efficiency rating, or suggesting that he make a better effort, depending on the type of rating that he had received.

In order to send out those letters, we had to get accurate addresses. We did that by circularizing every civilian in the bureau.

1150 After these current address slips had been returned, we prepared two lists, depending on the kind of letter that was going to be sent, and in the course of counting them up, the names on the two lists, we found that there were 1,052 employees in the Bureau who lived in Washington, D. C., or Maryland, and 302 who lived in Virginia.

Now, that represents all civilian personnel at the bureau who had received annual efficiency ratings, or was known as a ten-month efficiency rating during a trial period. So the figures exclude personnel who had been on duty for less than 10 months. I would say that that is approximately 125 or 150 people that are left out of these figures, who are now—or at that time were in the Bureau.

Q. What was the date of the fitting in of this information with these addresses?

A. I am unable to give you an exact date other than to say that it was approximately the middle of July. If you have to have an exact date, I can get it.

Q. That is near enough.

A. July past, 1943.

Lt. MATTHEW. That is all.

Cross-examination by Mr. LANE:

Q. Do you know the date that this questionnaire was handed out to the Navy personnel?

Exam. MATTINGLY. Are you speaking of Exhibit 33?

1151 Mr. LANE. Yes, Exhibit 33.

Lt. MATTHEWS. It is like this green one which was given to the Army, except in the case of Navy I believe it was blue.

The WITNESS. I am afraid I am not competent to testify to that. I did not handle it. I don't know how it was distributed or anything about it. That was handled in a different section.

By Mr. LANE:

Q. Did you make any compilation of the changes in address, in civilian personnel, as between May—your records in May or June, and those that you got in July?

A. No. We made no check on any changes. We were not interested in that information.

Q. Then for all you know, all 1,000 of those people might have changed their address between June 1 and July 15, even, or whatever date you got your address records completed.

A. Well, I could not say how many of them might have changed, but we have no way of knowing on the basis of this information how many changed.

Q. I say it might have been 100 percent change for all your records will show.

A. That is right.

Mr. LAND. That is all.

Exam. MATTINGLY. Any other questions?

(No response.)

1152 Exam. MATTINGLY. I believe that is all, Lieutenant.

(Witness excused.)

Mr. LANE. In order to shorten up this cross-examination regarding some of these exhibits, I wonder if Col. Barron would stipulate that the answers to these questionnaires do not show 1 percent of the people answering them, requesting lower fares, point No. 1, and point No. 2, that a majority of the people making any comment upon the bus service say that it is good or better.

Mr. PRETTYMAN. Good or excellent.

Mr. LANE. Good, very good, or excellent.

Mr. QUIRK. Good or better than good, you mean.

Col. BARRON. On the last point I will be glad to stipulate on the first I am not familiar enough with the questionnaire to know what facts are, but I will state that there are very few—I don't know just what proportion——

Mr. LANE. Well, we have made some rough thumbnail compilations here, and we find that out of 600 there are 6 who mention fares.

Col. BARRON. Of course it was not sent out at all for the purpose of obtaining complaints. It was sent out to get information.

Exam. MATTINGLY. Let us decide the point right now, and then we will go to the question as to what it shows, and if there can be some agreement——

1153 Col. BARRON. We will stipulate that it is a tremendously small number in any event. I don't know just what it is.

Exam. MATTINGLY. Would that be satisfactory?

Mr. PRETTYMAN. Yes. I really think, Mr. Examiner, now since the War Department has made so much of its ease on the complaint of employees about fares and transportation by bus service that some way ought to be effected in this record the number of these questionnaires which contain such comments as—that we keep running across this one Mr. Hill just showed me in the batch he was looking over, "I feel the Capital Transit Company is doing a splendid piece of work and really I think they are to be complimented on their fine service" and so on.

Now, that runs all the way through these, as we look at them. I don't mean that all of them are that way, but there are many

more statements of that sort in there, as far as I can see, than there are complaints about the fares, and in some way or other I think that fact ought to be reflected in the record.

Col. BARRON. This is for comment on bus service, and of course not having anything to do—if just speaks for itself here under K, comments on bus service. We did not ask any leading questions.

We did not make or suggest that they complain about fares
1154 or anything of that sort. We tried to make it a fair questionnaire.

Mr. PRETTYMAN. But the first sentence of the questionnaire starts out by saying that the matter involved, I will read the sentence:

"Your personal welfare demands that you fill out and return the following questionnaire at once to your supervisor. This study is being made by the War and Navy Departments in order to obtain data necessary to protect your interests in the matters pertaining to bus fares and service."

Now, the fact that it relates to bus fares in the very heading, the only blank for anybody to make any comment or complaint is K, where they are asked to make the comment.

Now, it would not be materjal if the War Departmnet had not insisted in the early part of this proceeding with great emphasis on the fact that employees were so dissatisfied with bus service.

Col. BARRON. As I have stated already, I am willing to stipulate, as I indicated, but I just want to state this; this obviously shows it was not sent our for the purpose of getting a test of complaints on fares. We have got that from other methods, and it has been testified to here.

Mr. QUIRK. I venture to suggest, Mr. Examiner, that if these answers to these questionnaires indicated 80 percent or 90
1155 percent of the employees criticizing the measure of fares, that it would have been in here as an exhibit.

Now, it is true that questionnaire does not in so many words ask for direct comment on fares, but it does ask for comments, and the significant thing about the answers is that the employees seem to have little concern with the fares. Their concern seems to be with the service, and some of them are very amusing.

I would like to read this one to you, if I may.

Lt. MATTHEWS. The questions call for comments on service, I think, so the comments are just responsive to the question. I might point out, Mr. Examiner, that it was not necessary to ask questions about the fare. The War Department was already of the view that the fares were too high, and no additional information was required on that.

Mr. QUIRK. Well, of course, we ought to keep—we ought to recognize—in all seriousness we ought to keep in mind certain dis-

tinctions. We can refer to the War Department here and the Navy Department in a brief rough sort of way, but the United States of America is not a party to this case. The counsel here put in appearances for the Secretary of War and the Secretary of the Navy. They are individuals and as litigants they are just like any other litigants, and then later the Secretary of Commerce appeared.

But counsel has emphasized by filing a petition here a little emotion or palpitation about how the clerks feel about
1156 the affair—that is not hard to get, but they only got 2,000 out of 35,000. But they made quite a point about representing the people or the employees, but actually they represent the two Cabinet or three Cabinet officers.

Now, having made that emphasis, it is perfectly proper to give weight to these answers.

Exam. MATTINGLY. Well, now, the Colonel has agreed to stipulate that a very small number of the returns of these questionnaires say anything about fares.

Col. BARRON. That is right.

Exam. MATTINGLY. Is that satisfactory? Do you want to ask for anything different in that in the way of stipulation?

Mr. QUIRK. As I understand it, I think the Colonel is willing to stipulate that examination thus far made of these returns indicates that an insignificant number even mentions fares and that most of the comment was about the service, and much of that complimentary to the service.

Col. BARRON. Yes, I will stipulate to that.

Mr. QUIRK. All right.

Mr. LANE. That is all right.

Mr. WHITTLESEY. I have some questions to ask Capt. Loughran.

Exam. MATTINGLY. Well, we have not gotten to him yet.

Mr. WHITTLESEY. I am sorry.

Mr. LANE. This was just to shorten the examination of
1157 Capt. Loughran.

Exam. MATTINGLY. I understand. Is there anything else about the questionnaire itself, before we call on Capt. Loughran?

(No response.)

Exam. MATTINGLY. All right, Capt. Loughran; take the stand.

Capt. JAMES E. LOUGHRAN recalled and testified as follows:

Cross-examination by Mr. HILL:

Q. Capt. Loughran, turning to the questionnaires, did you make any tabulations on those who live in Virginia and ride altogether in Virginia? If so, where do they appear?

Exam. MATTINGLY. This is still Exhibit 33 we are talking about, to keep the record straight.

Mr. HILL. Yes, sir.

The WITNESS. Since the present investigation concerns only trans-Potomac riders, no tabulation has yet been taken of the Virginia passengers who travel only intrastate.

By Mr. HILL:

Q. They are just in here because they fell in that order, is that correct? I mean, they are just here in the collection of returns.

A. No questionnaires have been destroyed. All questionnaires returned are still in the file.

1158 Q. They are still in the files intermingled with the ones on the trans-Potomac line, is that correct?

A. That is true, sir. The questionnaires are not filed in any particular order. If they had been, that order would not be disturbed.

Q. Was any check made of these, Capt. Loughran, or any effort made to reconcile obvious discrepancies on the face of the return?

A. Might I have counsel explain what he means by obvious discrepancies on the face of the returns?

Q. I have one here, No. 02032, signed by a second lieutenant whose signature is illegible. He said he uses the Capital Transit bus, and the R-2 bus, but he pays a 5-cent fare. Where did you put him?

A. One of the operations connected with the tabulation of questionnaires is that questionnaires which are incomplete on their face, or which seemed to be not entirely clear may be discarded or they may be reviewed or edited.

Q. What was done?

A. As Major Ristroph said, some of the people responding were contacted by phone. Others were—where the answer which is apparently the obvious one could be supplied, that was inserted in those few cases where the questionnaire itself was not self explanatory.

Q. For example, if an individual gave his address, as 1159 many of them did, and said that he used a particular facility, such as a bus line to one of the terminal lines, such as R-2, then if he showed—if he indicated that he had used a token and a nickel, or a pass and a nickel, or a dime and a nickel, that would be complete. If his answer was incomplete, it was probably omitted.

Can you tell me whether this 03032 was or was not omitted from the tabulations?

A. Is this in the record, Mr. Examiner?

Exam. MATTINGLY. No; it is not in the record.

The WITNESS. Is it all right to answer?

Exam. MATTINGLY. Yes; we have discussed it.

The WITNESS. I would say——

By Mr. HILL:

Q. Do you know whether it was or not?

A. May I have the question repeated, please?

(Pending question read.)

The WITNESS. I cannot. I might further state that it is impossible for me to state whether or not any of the 13,000 plus or minus, whether any particular one was or was not included in the calculations, because we did not carry a check by file or serial number of those which entered into any or all of the tabulations.

I might further say that where one is obviously incomplete, it was not included, as for example the one which counsel has just shown me which is completed only for the morning and
1160 shows no afternoon information.

By Mr. HILL:

Q. Were these returns run on one of those IBM machines?

A. No, sir; the information, for the information of counsel, the data furnished by the respondents to the questionnaires were coded and punched on IBM punch cards. The forms themselves were not sent through any IBM machine.

Q. Now, Captain, I call your attention to No. 02046, with the typed name, Helen Pierrot, without any address whatsoever. Will you tell me what you did with that one, and how you computed the distance from her home?

A. As to the first part of the question? What I did with this one?

Q. Yes.

A. In the usual—following the usual procedure, this questionnaire was probably used for those studies or phases in which it is on the face of it valid.

For example it shows that it used line R-2 and previously a Capital Transit bus. Insofar as distance from the building or point of residence, that is omitted from this. There is no answer to the question as to residence other than D. C. being marked, so that as to the second part of counsel's question, I would say that it was omitted from the computation of the average distances since
no point of origin was indicated, and it is necessary to have
1161 two points in order to effect a measurement.

Q. Then having included one class of information and excluded one, your averages are affected, are they not?

A. I will have to ask counsel what information he refers to and what averages.

Q. Have you got prepared exhibits here showing the distances from the homes of those who made returns to the questionnaires?

A. I have, sir.

Q. If you have left out one, then your averages become incorrect, do they not?

A. They do not to me.

Q. Just to that extent.

A. No, sir.

Q. You mean you just leave out the ones you don't have the information on and your average is correct for the remainder, isn't that it?

A. It would be obviously impossible, sir, to include them if the information is not there.

Q. Could you not have checked up? This is a lady; could not you have called her? It shows her extension number. Didn't you say that you did check up where some of them showed they were incorrect?

A. No, I did not, sir.

Q. Did anyone check up on those that showed they were
1162 incorrect or incomplete?

A. Major Ristroph has stated, sir, that he checked on some of them.

Q. Captain, I was asked to ask these questions of you because you were more familiar with them.

Now, did anybody check up on all of them that showed on there they were incorrect or incomplete?

A. To the best of my knowledge; no, sir.

Q. That is all I wanted to know.

A. Because there were some of them that it was—and the size of the sample obtained was such that it was not considered necessary that each and every one be investigated in each and every detail.

Q. Now, what did you do with those of which I find a number where they don't show which section of the city they live in and you can not tell from the names of the streets, such as for instance 13th and Monroe Street. What did you do with that one?

A. I think that 13th and Monroe Street is in the northwest section, sir.

Q. So you computed the distance from the northwest section, did you?

A. That is right, sir.

Q. I would like to have the Commission take judicial notice that there is also a 13th and Monroe Street Northeast, and
1163 there may be others.

A. Counsel is probably familiar with the fact that the majority of the population of the District is in the northiwest section.

Q. Well, perhaps a majority of your replies are correct, but I am not certain of it.

Captain, I would like to call your attention to the fact that some of these questionnaires show that some of the riders use a weekly pass and pay 5 cents in addition in some cases, but they don't use the weekly pass for any purpose, so they say, than to travel to and from work. Isn't that more expensive than to buy tokens?

A. On the arithmetic of that, yes, sir.

Q. The tokens are 12 for $1, are they not?

A. That is right, sir, or 15 for $1.25.

Q. And the pass is $1.25.

A. That is right.

Q. So they are paying 25 cents more for the pass than they need to pay.

A. That is right, sir.

Q. And they are paying $1 per month more than they need to pay the traction company, Capital Transit.

A. That is true, sir. From personal experience, I am inclined to say it does not pay to buy a pass particularly for a week. You have to get 15 rides out of the pass in order 1164 to break even.

Q. And those persons who use the pass only to travel to and from work don't break even, do they?

A. I would say not, sir. The use of them by the individual of course would not appear in our questionnaire.

Q. Captain, you will stipulate to one thing, will you not; that a large number of these returns to the questionnaires—and I have only examined a handful—show that the party has responded "no" to the question in the questionnaire reading, "Would you like to arrange for regular rides with people who work in your building and live in your neighborhood?

A. No, sir, I am not prepared to make that stipulation.

Q. Will you take—why are some of the numbers missing from here, Captain? I notice there is no 02176. It is missing. Does that have any significance?

A. To me, none, sir. The serial numbers were incorporated or placed on by hand stamping or writing, on all forms merely as a control, and the number of forms or the number of thousands of forms going to particular agencies within the department.

No check was made of the number released. The number returned by any particular department nor of the serial numbers which were returned, so that any one number might be missing as you have stated one is from those few in front of you now.

1165 Q. Now, I find No. 02093 shows that one lieutenant S. G. Ling uses the Rosslyn shuttle from and to which he walks. Then he pays a 10-cent fare morning and noon.

Will you tell me what was done with that in making up your tabulation?

A. It was probably omitted since it was obviously incorrect.

Q. Do you know whether it was or not?

A. Only—do I understand counsel to ask——

Q. Do you know? Do you remember?

A. Whether or not it was correct or whether it was excluded?

Q. No, no; I asked you do you know whether it was included?

A. I do not know whether or not it was included nor do I know for any particular one of the thousands of questionnaires obtained.

Col. BARRON. Might I ask a question?

Mr. HILL. Colonel, I wonder if you would not save us the time and check through this. There are people here who say they use passes and show no trips, no addition to their rides to work, and then in other cases they show either two or one.

In any event it will be less than $1.25 which they pay for the pass in value of rides at token rates. Now, if you prefer not to, I will hand these to Capt. Loughran and ask him to read through them and tell me how many he finds.

Col. BARRON. I am not familiar with what they show.

1166 If I knew——

Exam. MATTINGLY. Off the record.

(Discussion off the record.)

Exam. MATTINGLY. On the record.

By Mr. HILL:

Q. Capt. Loughran, I have three of these questionnaires, 02118, 02106 and 02089. Is it not a fact that each of those shows that the person filling out the return uses the weekly pass? It would have them show that they use it not at all in addition to their trips to and from work, and that the third one answers that he uses it "seldom, if ever."

A. Yes, sir.

Mr. HILL. That is all; thank you.

By Mr. LANE:

Q. How is that seldom if ever computed?

Mr. HILL. That is put under the F's.

The WITNESS. It was probably omitted. For instance, it was not possible to assign that definitely to a numbered value.

By Mr. LANE:

Q. Capt. Loughran, some of these exhibits are corrected in red pencil. Did you put them up——

Exam. MATTINGLY: Just a moment; you said exhibits.

Mr. LANE. I beg your pardon, some of the questionnaires are marked or corrected in red pencil.

By Mr. LANE:

Q. Did you put those marks on there yourself?

A. I cannot say, sir.

Q. Well, did you ever use a red pencil on a questionnaire
1167 personally?

A. Yes, sir.

Q. Did anybody else in your office use one?

A. I don't know whether they used a red pencil or not, sir. As has been testified, Major Ristroph made some corrections on some of these forms after asking the individual who completed the form for the correct item. I might state that none of the corrections which may appear on any or all of them were made just categorically, just out of the air.

Q. Well, what is the meaning when written on the side of a copy of this questionnaire, "audit".

I show you questionnaire No. 0172, and ask you if the word "audit" written on the side of that is in your handwriting.

A. It is not, sir.

Q. Whose handwriting is it in?

A. If counsel wishes, I can explain what it means.

Q. I would like to know.

A. It means when some one picked up the questionnaire, to edit it, he saw it was incomplete and wrote the word "audit" on there, suggesting the individual be contacted and correct information supplied by the individual for that, or the questionnaire not be used at all.

Q. Well, as an actual matter of fact, Captain, you have no means of knowing personally as to whether or not a majority of these questionnaires are filled out by employees of the
1168 War Department or not.

A. I have this way of knowing, sir: that they were not distributed to passersby on the street or transit riders. They were distributed through the various sections of the War Department, being passed down from the military district of Washington through responsible representatives, such as chief clerks of the various sections who were called together and handed a supply.

Q. But that is the only method of check you have of the authenticity of any of these replies which you have, isn't it?

A. The counsel will also note that the individuals' names are signed or printed on all forms used together with their War Department room number or extension. If an impostor found one of the forms and went so far as to counterfeit all the information, an invalid questionnaire might have crept in.

I think that that would be extremely difficult since they were distributed through War Department personnel to War Department personnel.

Q. A lot of the answers on these questionnaires are typed, aren't they?

A. Many of the sections are clerical stenographic help who possibly preferred to type it rather than complete it in handwriting, sir.

Q. And any one person could have filled in 50 of them if they so desired.

1169 A. They could have, sir, if they could have obtained 50 forms from anyone.

By Mr. PRETTYMAN:

Q. Captain, could I direct your attention to just one thing on Exhibit 17? You have that right there before you.

A. Yes, sir.

Q. This says "Pass use, nonwork" and gives the figure of R–2 for Exhibit M–42.75. Now, on the questionnaire you asked how many times the pass was used.

Now, do you have any means of knowing whether the answers to the questionnaires were based on times the passengers used them or based on the number of journeys made?

A. I would not be able to distinguish between the number of journeys and number of times the pass was used, but the question asked was use of how many times for week is it used other than to and from work, and presumably the answer would be the number of times per week in response to the question.

Q. Now, if the response to the question was journeys, then the transfer ratio ought to be applied to that figure before you use it in determining the value of the ride on the pass, ought it not?

A. I am unacquainted with your transfer ratio, sir.

Q. Well, let us assume the transfer ratio is 73 percent. Then if this figure means time, and you applied the transfer

1170 ratio, and you get the number of journeys on that top line, instead of 42.75, you would get 3.14.

Now, if that were the case, the figure over in the last column, value of ride, the top figure will change to 0.0825 instead of 0.0768, and then the third figure down in that column would be 0.0816 instead of 0.0756, and where you carry that figure over into Exhibit 19, where you have used your figure of 0.0756, that would change to 0.0816.

Then the rate of fares in the District of Columbia would be up, would be increased.

A. To answer the question, it is impossible for me to say of my own knowledge what the result would be if lacking adequate in-

formation on the subject, counsel's assumption were accepted as valid, and an arbitrary ratio applied to it.

Q. So that we do not know whether the answer to the questionnaire was literally times used, as the questionnaire asked, or whether it was journeys used, whether it was journeys.

A. I think I answered that question earlier, and to answer it again, it is not known, but since the question is how many times—since the question asks if using C. T. Company weekly passes, how many times per week is it used other than to and from work, I think the logical conclusion would be that the question answered was how many times.

Q. And you interpreted it as though that meant how many journeys?

1171 A. I did not interpret it.

By Mr. DUNLOP:

Q. What would time mean under those circumstances?

A. The times the pass was used other than to and from work.

Q. Then if a person used the pass other than to or from work, for we will say four journeys involving eight times which would you use, four journeys or eight times?

A. Four journeys.

Mr. PRETTYMAN:

Q. Your interpretation is that although they said times, you think they meant journeys?

A. Rather than transfers.

Q. But you don't know, do you?

A. I know only this, that if people called in completed the questionnaire and asked what does that question mean, the answer was the number of trips taken.

Q. How many people called in to ask that?

A. I can't say, sir.

Q. Well, I mean was it five or ten or a hundred or a thousand?

A. Well, I would say it was about ten to fifteen supervisors calling in, and that is just an approximation. It might have been more—I doubt it—it might have been more or it might have been less.

By Mr. DUNLOP:

Q. Captain, that would only mean that there were many
1172 people, if there were many people called in, it would mean that there were many people who did not understand what you meant by "times," would it not?

A. Probably it would, sir; but I don't think fifteen would be very many.

Exam. MATTINGLY. Did I understand you to reply to Mr. Dunlop's question that if one of these questionnaires reported used eight times, you would consider that four trips?

The WITNESS. No; eight trips. For example, an individual might in the——

Mr. DUNLOP. That is exactly what he did not say. He did not understand me, evidently, because the answer was just the reverse.

Exam. MATTINGLY. That is what I thought that he said, four trips.

The WITNESS. Might I have it read back?

Exam. MATTINGLY. Yes.

(Question referred to read.)

The WITNESS. I would like to correct that, then, and I am glad to have the opportunity to do that. That would count as eight trips.

For an example, if an individual were downtown to a movie and back four evenings, that would be eight trips.

Mr. PRETTYMAN. That is not what we are talking about. We are talking about supposing he gets on the streetcar and rides a mile; then he gets off and gets on another one,
1173 and rides another mile.

Mr. DUNLOP. On the same trip.

Mr. PRETTYMAN. He has used his pass twice, two times.

The WITNESS. Are you through, sir?

By Mr. PRETTYMAN:

Q. He has made one journey.

A. He has made one trip with two parts, a mile in each part. Now, he has flashed a pass a second time; instead of using a transfer, he has used a pass. As to how an individual would report that, I can't say.

Q. All right, that is all I want to know.

A. Speaking as an individual; I would say that that was one trip, no matter how many time is was broken or how many transfers were involved.

Q. Your question said how many times. We are agreed we don't know how the individual would interpret times, whether they would say they used it one time or two times.

A. I don't know what the interpretation would be.

Mr. PRETTYMAN. That is all I wanted to bring out.

By Mr. WHITTLESEY:

Q. Captain, you mentioned supervisors a moment ago. These questionnaires were distributed through the supervisors of various sections.

A. Representatives of the major armed services were supplied with questionnaires.

For example, one individual would obtain questionnaires for the Signal Corps personnel in the Pentagon, and
1174 others for others.

Q. So that in substance they were made out on government time, is that what you say?

A. The questionnaires?

Q. Yes, sir.

A. Yes. The questionnaires work was filled out by the individual while at work.

Q. Now, I show you questionnaire 01068, and ask you whether that questionnaire shows any response to question AA-6.

A. It does.

Q. Does that questionnaire also show a response to question AA-2?

A. It does.

Q. Now, does that questionnaire have any signs of editing on it?

A. None.

Q. Do you know whether that is one of the questionnaires applicable to the W. B. and M. Company and reported on Exhibit No. 17 in the number of 22?

A. I do not. As I have stated, it is physically impossible for me to state which questionnaires were included in any or all of the tabulations.

Q. This questionnaire, however, does show, does it not, that this particular person uses the Capital Transit and the W. B. and M. lines?

1175 A. For which trip?

Q. For the in-bound trip to the Pentagon?

A. Yes; this respondent has put two answers in the same column answering both in the groping AA, answering both—checking both items 2 and 6.

Q. Now, will you read the comment under question K?

A. Question K, comments on bus service "very good."

Q. Directing your attention to Exhibit 17, Captain, I note that you used the number 12 in the third column from the right. Now, what does that represent?

A. Since the department is operated on a six-day schedule, assumed the individual comes to work and goes from work six days a week, or a total of 12 trips to and from work during the work week.

Q. Now, will you refer to Exhibit 18, and I ask you what your tabulation shows as to number of persons who used a pass and also paid 10 cents to ride on the W. B. and M. lines.

A. The item in the column headed "Pass plus 10 cents" and in the row No. 4, W. B. and M., the entry is 7.

Q. Now, back on Exhibit 17 you show that 10 out of 22 persons riding a W. B. and M. line had passes, is that correct?

A. That is true, sir.

Q. So that out of those 10 persons, at least 3 did not use their pass to ride to or from work; is that the conclusion

1176 that you can draw from your tabulation?

A. No, sir.

Q. Your tabulation showed, did it not, that 7 persons used a pass plus 10 cents to ride either to or from the Pentagon Building?

A. That entry appears on Exhibit 18.

Q. Well, now, over on Exhibit 17, you have used the numeral 12; have you not?

A. Well——

Q. As the number of times each one of those persons used the pass in a week for office work.

A. Yes; the figure 12 appears on each row under the column heading "Work only" for the reason as stated that the pass used by those who use passes to and from work must necessarily be 12 times a day.

Exam. MAITINGLY. 12 times a week, I assume you mean.

The WITNESS. Excuse me; 12 times a week.

By Mr. WHITTLESEY:

Q. And that applies to those 10 persons shown on Exhibit 12. as using passes.

A. That would be true.

Q. But over on Exhibit 18 you show only 7 persons using passes to travel either from or to work.

A. That is true.

Q. That is a difference of 30 percent between Exhibits 17 and 18, is it not?

1177 A. That is true.

Q. Now, if that numeral 12 on Exhibit 17 was incorrect, by 30 percent, it would affect the value of the ride that you show in the extreme right-hand column on Exhibit 17, would it not?

A. To answer your question, it would, but I think it must be obvious that an individual using a pass to and from work would use a pass 12 times a week.

Q. But if that individual did use that pass 12 times a week, it would show a different result on Exhibit 18, would it not?

A. (No answer.)

Q. If your assumption——

A. We have 7 individuals, not pass uses, 7 individuals, so that figure 12—that is, the figure 12 bears no relationship to the figure 7 so far as I see.

Exam. MATTINGLY. Let us suspend until 2 o'clock.

(Thereupon, at 12:35 o'clock p. m., a recess was taken until 2 o'clock p. m. the same day.)

1178 AFTERNOON SESSION

2 p. m.

Exam. MATTINGLY. We will proceed.

Capt. JAMES E. LOUGHRAN resumed and testified as follows:

Cross-examination by Mr. WHITTLESEY.

Q. Captain, the figure 2.8000 on Exhibit 17, on the line designated W. B. and M. indicates what?

A. That the average pass use other than to or from work by those who entered the building, those respondents who entered or left the building on the W. B. and M. was 2.8.

Q. Now, that would apply only to those 10 persons designated in the fourth column there as pass users.

A. That is the average based on the information supplied by those 10 people, that they had passes and did use them other than to and from work.

Q. And the use of some of those 10 would be more than that and the use for others would be less.

A. That is the nature of an average with one exception, possibly.

Q. Isn't this 0.085 value that you designated out there higher than if all persons had used tokens?

A. Well, the value of the token I believe is accepted as .0833. This 0.0845 can be the answer. The answer to your question is yes.

1179 Q. Do you have any explanation at all, Captain, how it happens that for the tabulations from the 22 questionnaires relating to the rides on the W. B. and M. that this could be shown here, one, that the value of the pass use was higher than the token use, and two, that at least three people out of the 22 reported that they had a pass, but reported also that they paid a cash fare for travel from the Pentagon?

A. I believe counsel refers in the first half of his question to the information related from Exhibit 17, and the second half of the information from another exhibit.

Q. That is right.

A. Answering the first portion of the question, with reference to the item .08450 arrived at in Exhibit 17, being in excess of the cost of the token, I would say that it is impossible to explain why people buy passes. My statement would be as an individual and a pass holder, that you buy passes expecting to use them 15 or more time. You may or may not during any particular period.

You may lose money on the face of it. You may gain on the face of it, and in this I am endeavoring to explain the comparison which counsel makes between the two figures.

Other use of that pass, that is used by other than the pass holder, is not reflected in this tabulation. As an individual I know that sometimes passes are used legally or illegally by members of a family or by friends, other than the person—other than the person who purchased the pass.

1180 Q. Now, the method of tabulating these 22 questionnaires was used throughout this exhibit—I mean throughout this set of exhibit, was it not?

A. The method of tabulating.

Q. For these 22 persons, it was the same as the method of tabulation for all of the persons shown for all of the companies.

A. In general the same method of tabulation was used throughout the entire study.

Q. Well, could it be expected then that the inconsistencies illustrated by these 22 would appertain, in proportion, of course, throughout the rest of these people shown? I mean throughout the rest of the tabulation shown on Exhibit 17?

A. No.

Q. Well, I see; you made only errors as to these 22, is that it?

A. To continue my answer, if I may, to your preceding question, in preparing the sets of tables, those items are used which may be used in that table, any and all of them. Discrepancies between tables will occur in any sets of tables prepared in studies of this nature unless the studies are restricted, which may involve 15 or 20 questions, restricted in scope to those which answered all 20.

I would say rather than that that it is current practice in 1181 statistics to use the items which in referring to your particular statement to use those which were valid answers to a particular question. Some discrepancies may occur in individual tables based on answers to particular questions.

Q. Well, all of this information as to each person was tabulated on a single card, was it not, and punched?

A. Yes.

Q. Then if you were to arrive at a different set of statistics concerning that same group of people, you merely required one of these tabulating machines and the card went through a different way, isn't that correct?

A. That is true, but I think your attention should be directed to this: That there are some questions, as counsel has pointed out, which were not answered by various of those who responded to the questionnaires.

Q. Well, now, there is a discrepancy, is there not, between the information indicated on Exhibit 17 and the information indicated on Exhibit 18 at least insofar as the use of a pass is indicated on those two exhibits?

A. I would state that there is a discrepancy between 22—the total number of 22 on Exhibit 17 and the total number of 21 on Exhibit 18, for example.

Q. There is also a discrepancy between the seven shown on Exhibit 18, and using a pass, and the 10 shown on Exhibit 17 as possessing a pass.

A. That is true, sir, but the relative significance of the
1182 discrepancies is also relatively—the relative insignificance of the discrepancies is also apparent.

Q. Well, had you used only the 7 persons who stated they used a pass, instead of the 10 who said they possessed a pass, you would have a different cost for the value of the ride, wouldn't you?

A. That is true. May I indicate to you what that effect would have been?

Q. Yes.

A. Total number of nonwork being used, 28; value of nonwork use has risen to 4; total work use would have increased and value derived would have decreased, but not to any appreciable extent.

Mr. WHITTLESEY. That is all I have.

The WITNESS. In reference to that question, Mr. Examiner, if I may supplement what I said before, as to replies to the question H, if using C. T. Company weekly pass, how many times per week is it used other than to or from work, some question or questions have been directed at the possibility of that question having been misunderstood by those who completed their questionnaires.

I have stated that it was understood or interpreted to mean the number of times or the number of trips which were used, for
1183 which a pass was used, for which separate fares would have had to have been paid, that is the number of times a pass, rather than the number of times a pass would have to be shown to an operator getting on or off the streetcar or bus, in completing a single journey.

I would like to point out this, that if personnel did misunderstand and report each portion of a trip as a time the pass was used, rather than an entire one-way trip, those reported times used were included in the total pass uses. If it was desired for any reason that that total, or that that reported information be corrected, as was suggested as a possibility to remove any errors which might have crept in due to misunderstanding, then the total pass use would have been revised downward, and result in an increase in the value of pass use.

For example, from .0768, that would go to some higher figure, and in turn the average fare and the total estimated revenue from the operations in question would be higher than that presently estimated.

Col. BARRON. In other words, the more you show pass use, the lower the revenues are shown to be.

The WITNESS. That is right. The average fare and the total estimated revenue would have to be adjusted.

If we tried to correct that, and that would change, it seems obvious that if any such errors have crept in and have been retained there, since we made no adjustments in the information reported, that it operates to the benefit of the companies concerned in the data which we have developed.

1184

By Mr. LANE:

Q. When you say companies concerned, you are referring to Capital Transit Company only, aren't you?

A. Not necessarily, sir, in that the value of pass use appears in the calculations made as to the revenue obtained.

Q. But insofar as any of the Virginia companies are concerned, none of the revenue from any of the pass rides is attributed to those companies.

A. That is true; the passes are sold by Capital Transit.

Redirect examination by Col. BARRON:

Q. Captain, have you had any prior experience in making tabulations of this character or in drafting of questionnaires of this type?

A. Yes, sir; I have.

Q. Has it been considerable or inconsiderable?

A. I think it would be considered considerable experience.

Q. Would it run into the hundreds of thousands?

A. I have in the course of my work with various agencies or employers probably supervised the preparation of questionnaires which were returned in number over a quarter of a million in various states throughout the country.

Q. Was it your purpose in drafting this questionnaire to elicit any particular type of information over some other?

A. No; it was not, sir. The intent in preparing this form of questionnaire was simply to obtain the data necessary to our work, which includes the supervision of bus transportation to and from the installations with which we are dealing. No attempt was made to elicit particular items of information or to ask any leading questions.

1185

For example, there have been some comments or some references made to this question K, comments on bus service, and as to possi-

bility of it being interpreted in terms of fare complaints. In that connection I would like to direct the attention of the Commission to the fact that while the introduction statement said this study is being made by the War and Navy Departments in order to protect your interests in matters pertaining to bus fares and services, particular questions are asked on each of those phases. Question E concerns fares; question K concerns comments on bus service, and the fact that but few people or relatively few people made any comments on the fares as such in connection with that does not reflect on the question. I think that that is borne out by the references made by counsel to the fact that many of these concern service. That is what they were intended to concern, service.

The fare picture is given in the question above, where information is sought on fares.

Re-cross-examination by Mr. QUIRK:

Q. Don't you think, Captain, that if there was any in-
1186 herent, deep-seated feeling on the part of the great mass of employees over there that the fares were too high and had an opportunity like this to voice that sentiment, that they would have done so?

A. I think so, sir. I think most of them did in answering the question, although we did not give them a chance to be emphatic about it. We did ask them how much they paid and they told that, and some of them put comments right alongside their fares.

Q. It is already stipulated in this record that very, very few of them made any complaints as to fares.

A. In response to a comment, to a question asking them to comment on bus service——

Mr. PRETTYMAN. There is a stipulation in the record.

By Mr. QUIRK:

Q. Comment is wide open.

A. It asked for comments on bus services.

Q. All right.

A. I think it is apparent that if we had, in designing this questionnaire, had intended or wished to bring in——

Mr. PRETTYMAN. Objection, Mr. Examiner; nobody is asking the question.

Col. BARRON. I will ask it.

The WITNESS. May I continue?

Exam. MATTINGLY. Go ahead.

The WITNESS. That if it had been desired to bring in one-sided information, it would have been very simple
1187 to have put in a question "Do you think the fares excessive" and while not able to tell what the answers would have

been, my opinion, in which I think all of you would join, is that almost all of the employees would say "Yes: the fares are definitely excessive," but to my mind as a technician or statistician preparing forms that type of question would have been unfair to the company.

Mr. QUIRK. I suggest that the significance of the absence of the comment on fares is a matter of inference and argument. There is no use to have the witness go on and on about it.

Exam. MATTINGLY. Any more questions of this witness?

Mr. HILL. Yes, sir.

By Mr. HILL:

Q. I would like to ask Capt. Loughran if he ever saw this document which I hand him.

A. Previous to now, no, sir; I have not.

Q. This is the first time it has ever been in your hands?

A. The first time, sir.

Q. Thank you.

A. Nor have I had anything to do with the preparation of any material of that nature.

Q. You are a fast reader; how do you know what is in there?

A. Sir, I can tell by the heading of documents shown to me whether or not I have ever handled it.

Mr. HILL. May the record show the witness told this 1188 in the space of one and one-half seconds?

Exam. MATTINGLY. Anything further? Does anybody have any more questions?

Col. BARRON. May I have that stricken. He did not say that he read it.

Exam MATTINGLY. Oh, that is unimportant.

Col. BARRON. We have no more.

Exam. MATTINGLY. You may be excused.

(Witness excused.)

Col. BARRON. We are ready to go on with this other line of testimony with Mr. Dickson, whom I will call now.

Exam. MATTINGLY. All right.

JAMES F. DICKSON was sworn and testified as follows:

Direct examination by Col. BARRON:

Q. Will you state your name and address and present occupation?

A. James F. Dickson, 722 Roxboro Place NW., Washington, D. C. I am the assistant director of the motor vehicles section of the Board of Investigation and Research. This Board was established as a result of the Transportation Act of 1940.

Q. Well, what generally are its functions?

A. Its function is to determine the relative economy and fitness of all modes of transportation. Its duty is to
1189 investigate and report its conclusions to the President and to Congress.

Q. And have you ever made cost studies of utility companies?

A. Yes; I have, sir.

Q. What classes?

A. Motor transportation.

Q. Have you had occasion to testify in connection with such matters before this Commission?

A. Yes; I have. I developed and prepared the cost evidence for the defendant in Docket No. I. & S. M-24 before the ICC.

This case involved a cost study applicable to the movement of property by motor truck on a regular route common carrier operation.

Q. What other experience have you had in the field of motor transportation?

A. I have also appeared as a cost witness before the ICC in Docket No. Ex Parte MC-22, New England Motor Carrier Rates.

I am assistant treasurer and clerk of the H. B. Church Truck Service Company of Boston, Mass. I have been affiliated with the Ohio motor transportation industry for 20 years.

Q. Are you a graduate of any school of accounting or finance?

A. Graduate of Bentley School of Accounting and Finance, Boston, Mass., and have taught motor transportation
1190 costs at that institution.

Q. What is your present age, please?

A. 47.

Q. As a result of your education and experience, do you consider yourself familiar with the proper methods of allocating expenses of transportation companies?

A. I do.

Q. Have you prepared an exhibit in connection with this case at the request of the War Department, setting forth allocations of expenses to the Pentagon Building line of the Capital Transit Company?

A. I have.

Col. BARRON. We offer for identification Exhibit 101.

(War Department Exhibit 101, Witness Dickson, marked for identification.)

By Col. BARRON:

Q. Do you have before you what has been marked for identification Exhibit 101?

A. Yes, sir.

Q. Caption, "Pentagon Line, allocation of expenses for seven-month period ending July 31, 1943."

A. Yes, sir.

Q. Did you prepare that exhibit, sir?

A. I did.

Exam. MATTINGLY. I assume this is the Pentagon line of the Capital Transit Company.

1191 Col. BARRON. Yes, sir; Capital Transit Company.

By Col. BARRON:

Q. Will you in your own way state how you prepared that exhibit and what basic data you used?

A. This exhibit No. 101 was prepared from the basic data set forth in Exhibit No. 98.

Q. In this case?

A. In this case.

Q. Yes, sir. What does it purport to show?

A. This exhibit purports to show the total system costs for the company for the seven months ended July 31, 1943, segregated into running and fixed expenses.

The reason for segregating these expenses into time and running categories is because we feel that an average cost per bus-mile or per bus-hour is of little value to anyone. What seems to be desired in this case is the cost for a given length of haul; namely, the Pentagon operation.

It is obvious that long hauls cost more than short hauls. The question is, how much more.

It is also obvious that with a given length of haul the cost is more to transport passengers en route than it does to express passengers from point of origin to point of destination.

One can divide an annual expense by the number of bus miles traveled and obtain the cost per bus-mile for that exact number of miles under those specific conditions and for

1192 that particular period. But it is more difficult to tell how much it would have cost if the busses had traveled a thousand miles greater or a thousand miles less of operation.

It is clear, of course, that the time costs would remain the same. The bus-mile cost would be entirely different since the time cost does remain the same, and the only variable costs increase or decrease with greater or lesser mileage.

Q. Have you explained all of your reasons for your method of allocation?

A. Well, this means, of course, that there are two factors affecting these costs. One is distance and the other is time. They cannot be combined into one unit for cost purposes. As a result of this line of reasoning, we have segregated the costs of operating,

as shown in Exhibit No. 98, under two general headings: Running and fixed expenses; under running expenses shown in this Exhibit No. 101, we have included all expenses which are believed to accrue in direct proportion to the bus-miles traveled.

In the column headed "system" are the total itemized running expenses of the Capital Transit Company for the seven months ended July 31, 1943. The cost per bus-mile costs were determined by dividing each item of running expenses by the total bus-miles traveled during the seven months as reported by the company.

The total running costs applicable to the Pentagon
1193 operation were determined by multiplying the costs per mile applicable to each item by 427,663 miles as set forth in Exhibit No. 98.

In the second category, that of fixed expense, we include all expenses, which are related to the hours of operation. To determine the cost per hour shown therein, each item of expense, of fixed expense, was divided by the total number of hours that the busses operated throughout the system; namely, 1,590,792 hours.

To determine the number of hours applicable to the Pentagon run, the reported number of miles operated on the Pentagon run: namely, 427,663 miles, was divided by 17, it being my understanding that the average speed per hour of the vehicle on the Pentagon run was 17 miles, according to previous testimony.

By Capt. DAVIS:

Q. When you said 427,663, you meant miles, did you not?

A. Miles, that is right.

Q. And when you referred to system expenses, were you referring to the bus system as distinguished from the combined bus and streetcar system as shown in Exhibit 98?

A. 98; that is right.

Q. Now, I notice that the figure of $9,183 is shown opposite fare collectors. Is that the total amount as taken from Exhibit No. 89?

1194 A. Yes, sir; and from my understanding that there is no other fare collectors throughout the system, and that the entire cost of fare-collectors is applicable to the Pentagon operation. If there are fare collectors throughout the system, naturally that charge there would have to be reduced.

Q. But for the purposes of this Exhibit you assumed that it was all charged to that operation, and you have done so.

A. That is true.

Q. Now, in the event that the fare differential was eliminated so that it was not necessary to have all those fare collectors, that amount would be proportionately reduced, would it not?

A. That is true.

Q. And on the basis of the information to which you have testified and on the basis of your opinion based upon these assumptions, what is the cost per passenger per each trip?

A. The cost per passenger for each trip is 3.572 cents per passenger.

Q. And that is shown about two-thirds of the way down in this exhibit?

A. That is true.

Col. BARRON. I offer the Exhibit in evidence.

Exam. MATTINGLY. In the absence of objection, it will be received in evidence.

(War Department Exhibit 101 received in evidence.)

1195 Mr. PRETTYMAN. I understand that we have a right to cross-examine later. I want to cross-examine on the exhibit as far as admissibility is concerned. I suppose it is admissible for whatever it is worth.

Col. BARRON. All right, sir.

By Capt. DAVIS:

Q. Mr. Dickson, if you were to obtain the so-called out-of-pocket costs for this operation, what figures would you use?

A. I assume by that question you mean what the out-of-pocket costs would be if you were to take on the—assuming that you did not have the Pentagon run and you were going to take the Pentagon run on what figures you would use here to determine the out-of-pocket costs applicable to that operation.

Q. Yes; or in other words, how much would you save if you stopped operating the Pentagon operation.

Mr. HILL. Mr. Examiner, may it be understood that my previous objection in respect to evidence of out-of-pocket costs runs to this?

Capt. DAVIS. We are not conceding it is material.

Mr. HILL. Did you get the end of any subsequent testimony along that line?

Capt. DAVIS. We are not conceding that is material, but since the matter has been raised, we believe that this witness should comment on it for the information of the Commission.

1196 Mr. HILL. I believe you first raised it, and now you comment on it, and now you say it is not material. Isn't that right?

Mr. QUIRK. I would not worry about that, Captain.

Exam. MATTINGLY. Go ahead with the witness, Captain. Go on, Mr. Witness.

The WITNESS. Assuming that all the time costs would be allocated to the system, outside of the Pentagon run, then the out-of-pocket cost applicable to the Pentagon run of course would be

a variable cost which resulted from that, from the additional business of operating the Pentagon run, namely, on the running expenses it is $45,165.

Assuming that the busses would be used elsewhere in the system, I do not believe that it would affect depreciation. There are some variables in these time costs which probably could be considered out of pocket costs.

By Capt. DAVIS:

Q. It would include the fare collectors and the wages, would it not?

A. Definitely.

Q. And possibly some items of overhead in general overhead, would continue regardless of this particular operation, would they not?

A. That is a fair assumption.

Q. Now, Mr. Dickson, I hand you here a document which I will ask to have marked for identification as "Exhibit No. 102."

1197 (War Department Exhibit 102, Witness Dickson, marked for identification.)

Capt. DAVIS. This document is headed "Computed cost per passenger between Pentagon and destination."

By Capt. DAVIS:

Q. Did you prepare this exhibit, Mr. Dickson?

A. I did.

Q. Will you tell us briefly what it shows?

A. This exhibit shows the total cost per passenger.

Q. Between what points?

A. Total cost for transporting passengers between Pentagon Building and their ultimate destination. In other words, the total cost of 3.57 cents on Exhibit No. 102 corresponds with the total cost of 3.57 cents shown on Exhibit 101.

Q. And is the reference to previous Exhibit 101 which you just identified before this one?

A. That is true. The cost per passenger between terminal and point of destination, based on an average distance of 2.7 miles, which I understand to be the average miles traveled by the bus from the terminal points to its ultimate destination.

Q. And that is based upon the average total distance of 6.2 miles, less the 3.15 miles from the Pentagon to the Pentagon terminal, is it not?

A. That is right.

1198 Q. All right.

A. The hourly and mileage cost has been computed for this 2.7 miles, which results in a total cost per bus trip of 104.7 cents.

Q. That is for the trip from the terminal to destination?

A. That is the vehicle cost. The cost per passenger from terminal to destination is based on the assumption of 30 passengers average, or a cost per passenger for the 2.7 miles from terminal to destination of 2.49 cents per passenger.

Adding that 3.49 cents per passenger to the total 3.57 cents applicable to the Pentagon run, we arrived at a total cost per passenger of 7.06 cents per passenger.

Capt. DAVIS. Your witness.

Col. BARRON. We offer the exhibit in evidence.

Exam. MATTINGLY. In the absence of objection it will be received in evidence.

(War Department Exhibit 102, Witness Dickson, received in evidence.)

Col. BARRON. We have no further questions of this witness at this time.

Exam. MATTINGLY. Do you want to hold your cross-examination of this witness until later?

Mr. PRETTYMAN. I would like to cross-examine him a little bit.

Col. BARRON. We have another exhibit to put in.

1199 Lt. MATTHEWS. One question to clarify this.

By Lt. MATTHEWS:

Q. I presume the cost between Pentagon and destination would be the same as in the other direction, would it, by your figures?

A. No, sir.

Q. Now, were you referring to the——

A. When I was asking you if from home to the Pentagon, it would be the same from the Pentagon home.

Q. I assumed that.

A. I assumed that; that is true.

Col. BARRON. That is all for the moment.

Exam. MATTINGLY. You are excused temporarily.

(Witness excused.)

Col. BARRON. I will recall Mr. Kosh.

DAVID A. KOSH, recalled and testified as follows:

Direct examination by Capt. DAVIS:

Q. Mr. Kosh, I show you here a document which I will ask the reporter to mark for identification as Exhibit 103.

(War Department Exhibit 103, Witness Kosh, marked for identification.)

By Capt. Davis:

Q. Did you prepare this exhibit, Mr. Kosh?

A. This exhibit was prepared under my supervision and at my direction, and I checked it.

1200 Q. The exhibit is headed "Capital Transit Company Pentagon line revenues." Will you state what it shows, and how it was computed?

A. Yes: on a previous exhibit, Exhibit 89, there was an indication of the total number of passengers on both the Q–2 and R–2 lines to the Pentagon carried by Capital Transit. There were no figures available from the company as to the breakdown of those passengers between those two runs.

This exhibit is an attempt in the first place to allocate between the two lines the total number of passengers carried. The way that allocation was done is as follows:

Q. Just a minute. When referring to the total passengers carried, you are referring to the figure of 3,590,491 shown in Exhibit 89, which is also set forth in Exhibit 103, is it not?

A. That is correct, yes; that three million figure taken from Exhibit 89.

Q. So the first part of it is designed to break that down as between the two lines.

A. That is correct.

Q. Now, will you tell us how that was done?

A. Yes, sir. Every week Capital Transit Company sends to the War Department, directly to Major Ristroph, a table, one or two of those tables have been introduced, indicating the number of trips and number of passengers carried on particular

1201 days at particular times. I took that whole file from the first of the year, the last report being September 19, 1943, and added up all the A. M. passengers on the R–2 line, all the P. M. on R–2 line, and the same for all A. M. and P. M. passengers on the Q–2 line. I considered this as a sample of the total operation.

The total people reported is 528,652, or about one-seventh of the total people carried, a very adequate sample.

Now, on the basis of that sample, and by the way, these reports are presumably for typical days of each week—on the basis of this sample, 68.79 percent of the total people were carried on the R–2 line and 31.21 percent were carried on the Q–2 line.

I applied those percentages to the total passengers carried as reported by the company on Exhibit 89, and imputed 2,469,899 passengers to the R–2 line and 1,120,592 passengers to the Q–2 line. That is the first half of that exhibit.

Q. Now, have you been present at this hearing during the discussion of the fare on the Q–2 line? Are you familiar with the charge made on that line?

A. Yes, sir.

Q. What is that fare?

A. My understanding is that the fare on the Q–2 line is a nickel plus evidence of a previous ride on a Capital Transit line or in lieu of that evidence, a Capital Transit fare.

1202 Q. Either a dime or a token or pass or transfer.

A. Yes; pass or transfer would be evidence of previous ride and dime or token would be the payment if no other evidence is indicated.

Q. So on the basis of that you then proceeded to make a computation of the revenue properly allocable to that Q–2 line, did you?

A. Yes: this way: A nickel would not get you on that line, on that bus. In other words, a nickel is not the fare on that bus. The fare on that bus is a nickel plus an allocation of the Capital Transit fare which you had to prove evidence of or pay the full fare.

Now, on a previous exhibit it was indicated that the average cost of a Capital Transit ride, within the District, for people working in the Pentagon was 7.9 cents. I think the exact figure was 7.9 cents.

Q. Just a minute. That is an average of the cash fares, token fares and passes.

A. That is right. It is the average fare paid by employees in the Pentagon Building, paid for their rides in the District exclusive of that ride to the Pentagon. I added that average fare——

Mr. PRETTYMAN. Where is that from?

The WITNESS. One of the previous exhibits: I can find it for you. I have not a set of them with me. I will get it.

1203 Exhibit 19, Mr. Prettyman; do you have a copy of that Exhibit 19?

Mr. PRETTYMAN. Yes.

The WITNESS. The first major heading there is the Pentagon, and line A underneath that is Capital Transit Company, and you will find the rate of fare within D. C., the last figure on that, for the Capital Transit Company is $.0787, or 7.87 cents. I think I said 7.89. It should be 7.87 cents, or to the nearest tenth, 7.9 cents. That is the figure appearing on Exhibit 103.

I added the 5-cent direct fare that would have to be paid then on that Q–2 line, and got a total fare on a complete carriage from home to destination of 12.9 cents.

As previously testified in this proceeding, the distance from the terminal to the Pentagon is 3.5 miles. The total average distance

of Pentagon employees from their homes to the Pentagon is 6.2 miles, 3.5 miles of 6.2 miles, or 56.45 percent is allocable to that Pentagon run. 56.45 percent of that 7.9 cents is 2.8 cents. In other words, total fare chargeable to that Pentagon ride is not a nickel but 7.28 cents, because in addition to the nickel there is a part of the District fare that must be allocated to the Pentagon run.

By Capt. DAVIS:

Q. In your opinion this is the most reasonable way of allocating it?

1204 A. I think that is a reasonable way; yes. Now, on the first part of the exhibit, we had the imputed number of passengers on each of those two lines. The part just previously explained indicates 7.28 cents on the Q–2 lines. On the R–2 line no evidence of previous ride is necessary as I understand, simply payment of a nickel regardless of how the person got to that point.

Applying the nickel to R–2 number of passengers we get the revenue for that run. Applying the 7.28 fare to the Q–2 passengers we get the revenue on that. In other words, the imputed revenue collected on that Pentagon run, for the seven months, would be $205,074.

Q. And that figure may be compared, may it not, with the figure of $179,524 shown on Mr. Heberle's exhibit No. 89 for revenue?

A. Well, I would not compare it. I think the $205,000 is a truer indication of what the revenue on that line is, but it purports to be the same item of revenue; yes.

Q. Now, have you deducted the allocated cost of service as shown on Exhibit 101 from the revenue as you have computed it?

A. Yes; that $128,267 is the figure gotten from Exhibit 101. Subtracting that expense from the revenue on those two lines, you get a profit for seven months operation of that line to be $76,807, which is 60. 59.9 percent of the expense on that line.

1205 Another way of indicating the rate of profit——

Mr. FREITYMAN. Where did you get the expense?

The WITNESS. That $128,000; in other words, $76,807 is 59.9 percent of $128,267.

By Capt. DAVIS:

Q. Putting it in another way, based on the allocated cost of service, the profit is approximately 60 percent.

A. Yes. I think another and possibly better way of indicating what the rate of profit would be this: On Exhibit 89 Mr. Heberle indicated a rate of return of 7 percent. He got that figure to be $22,000 some odd.

Now, 7 percent of $325,000 would give you $22,000, so I presume Mr. Heberle had in mind a property value of $326,000 allocated the Pentagon operation.

Q. You have not examined it, if that is correct?

A. No; I merely capitalized the $22,000 figure on 89 at the interest rate he indicated of 7 percent.

Q. Now, assuming that there is that much property allocable to the Pentagon operation.

A. Yes, assuming that $326,000, the figure applied in 89, is correct, the profit on the Pentagon operation would be about 23.3 percent.

Q. That is an annual rate on investment, annual return on investment.

A. No; that would be 23.3 percent on seven months. If
1206 you ran that out to an annual rate—in other words, $76,000 is 23.3 percent of $236,000. That is the actual rate earned during seven months.

Now, if you want to put that to compare to 7 percent on an annual basis, that would be 12/5ths of that. I will tell you what it would be in just one second. 12/7ths I mean, instead of 12/5ths. It would be 40 percent. That would be at an annual rate of 40 percent.

In other words, should the Pentagon operations continue, the way they have gone for seven months, then the profit on that operation would be 40 percent of the value of that Exhibit 89 allocation to the operation.

Q. Now, the extent to which there is actually less property used in that operation, your rate of return would be correspondingly increased, would it not?

A. Of course indirectly.

Capt. DAVIS. That is all.

Col. BARRON. We offer the exhibit.

Mr. PRETTYMAN. May I reserve cross-examination?

Mr. HILL. I object to the exhibit on the grounds it is partly based on results of the questionnaire.

Exam. MATTINGLY. The exhibit will be received in evidence.

(War Department Exhibit 103, Witness Kosh, received in evidence.)

1207 Mr. HILL. May I ask one question?

Cross-examination by Mr. HILL:

Q. Mr. Kosh, the cost of service is $128,267 taken from Exhibit 101, you say?

A. Yes.

Q. And that is just for the Pentagon line, isn't it?

A. That is right.

Q. Well, now, over on your Exhibit 103 you have shown the revenue for the Q–2 line, and the Q–2 line you have assumed to be from anywhere in the District of Columbia, have you not?

A. Oh, no. The Q–2 line and R–2 line just broken down the number of passengers; both Q–2 and R–2 together make up Pentagon.

Q. Your revenue on Q–2 is shown as 7.28 cents per passenger, is it not?

A. Yes, sir.

Q. Obviously that takes in something beyond the Q–2 line itself physically, does it not?

A. You mean the 7.28?

Q. Yes.

A. Oh, no, merely this: If you wanted to board that Q–2 line, I could not get on for a nickle. Now, the difference between 7.28 and 5 cents is what can be attributed to that difference
1208 above the nickel that you would have to pay in order to get on that line.

Q. So you have attributed a part of the fare which is paid beyond Q–2 in your revenue figures there, have you not?

A. All I have done is this: A person coming into the Q–2 line gets a transfer or shows some kind of indication of having paid a fare, and that showing which entitles him to get on that Q–2 bus for an additional nickel is worth 2.28 cents.

Q. All right. Now, where have you brought over the corresponding expenses to Q–2?

A. Corresponding expenses for the R–2 and Q–2 line together as found on Exhibit 101 are $128,267.

Q. Now, are there any figures on that 101 carrying Q–2 actually beyond the physical terminal except Constitution Avenue? That is what I am asking.

A. No; I think I explained it. It does not carry you past. It is simply this; if you are riding on a joint fare, you paid the total originating carrier all that is attributed to that part of the ride, the part that will be attributed to it.

Q. You attributed the share of revenue of Q–2 and no share of the expense to Q–2, now; isn't that correct?

A. No, I don't think that is fair.

Q. Well, you think that no part of the expense of carrying them to get to the terminal at 7th and Constitution Avenue should be charged to Q–2, but that revenue over and above
1209 that nickel which is paid in addition is to be charged to the Q–2?

A. Well, let me explain it to you this way——

Q. Well, can't you answer that question?

Exam. MATTINGLY. Is that a fact or is it not, Mr. Kosh? Then explain any way you want to.

The WITNESS. I did not add any cost for other than R-2 and Q-2 operations in the cost of the Pentagon operation. I took that from Exhibit 101, and I presume that just includes the operation there. But I have attributed revenue from another operation, as I explain, and the joint fare proposition, which it is, because, Mr. Hill, if it weren't, there would not be that restriction on that Q-2 line, and people would be allowed to get on for a nickel.

By Mr. HILL:

Q. Do you think it costs Capital Transit anything to get the passengers down to 7th and Constitution Avenue?

A. Sure.

Q. Have you put anything of that expense in this exhibit?

A. No. Apparently Capital Transit does not want to attribute it that way.

Q. I did not ask you that. I asked you whether you put it in there. Can't you answer that question?

A. No; I did not put it in.

Q. All right.

1210 A. Now I will explain it.

Q. You can explain it, but first answer the question.

A. I am sorry if you did not understand.

Q. I understand.

A. I tried to make it as simple as possible.

Exam. MATTINGLY. Stop arguing. If you have any explaining to do, go ahead.

The WITNESS. The difference I allocated on one line and not another is simply the method of charging cash by the Capital Transit Company. There must be some reason they have in mind for letting people at one point get on for a nickel and having people at another run show evidence of having ridden a Capital Transit facility or paying another fare that is simply——

Mr. HILL. That is very simple. That fact is you have charged revenue for a run, charged expenses——

Capt. DAVIS. I might point out Exhibit 102 is designed to show expenses for the total run, whereas 101 is designed to show it for that particular operation.

Mr. HILL. Show me where the expenses for a part of it are brought forward on the Q-2.

Capt. DAVIS. They are not on 101, but they are on 102.

Mr. Hill. 103 is based on 101, Captain. Your witness says that. I don't know what you want to testify to.

Capt. DAVIS. It is based on 101, and showing the cost 1211 of that particular service, and it is a reflection of part of

the fare properly attributable to that operation as he has testified.

Mr. HILL. Well, I find your explanation no more illuminating that that of your witness.

By Mr. PRETTYMAN:

Q. Mr. Kosh, according to the way you computed this on the Q–2 line, ordinary passengers pay a certain fare for District service; taken from Exhibit 19, it is 7.9 cents; is that right?

A. Those are Pentagon employees. That average figure is for Pentagon employees.

Q. Yes. All right. I think that is the average—well, that is an average figure for District service, isn't it?

A. To Pentagon employees.

Q. Yes. All right. Now, other people ride in the District, for district service, on a pass, token, or a 10-cent fare; right?

A. Yes.

Q. And the people that get on the District service and ride somewhere in the District coming over to R–2 get a certain amount of service for 7.9 cents; is that right?

A. Yes.

Q. Now, your theory is that anybody that gets on the Q–2 line, gets the same District service for about 5.5 cents instead of paying 7.9 cents for it; right?

1212 A. There is a difference. I don't follow your numbers, but there is a difference.

Capt. DAVIS. He did not say that, Mr. Prettyman.

Exam. MATTINGLY. Well, now, wait a minute; let us see what he says.

The WITNESS. Would you repeat those numbers? I will follow the exact figures.

By Mr. PRETTYMAN:

Q. All right. The total fare, I am looking straight at Exhibit 103, is 7.9 cents plus 5 cents.

A. Yes.

Q. 7.9 cents represents a service from Capital Transit Company within the District of Columbia, exclusive of R–2 and Q–2.

A. To Pentagon employees.

Q. That is District service where anybody who gets on in the District,

A. Yes.

Q. Now, a fellow that rides R–2 pays that amount of money and gets District service.

A. That is right.

Q. According to your theory the fellow riding Q–2 gets that District service for about 2.3 cents less than the 7.9, which is about 5.5 cents.

A. It is 2.28 less, is it not?

Q. All right, about 5.5 cents.

1213 A. 5.6, yes.

Q. All right. So your theory is that a man who rides R–2 gets full District service for 7.9, but a fellow riding Q–2 gets full District service for only 5.5 cents.

A. That is not so, and I will tell you why; because you are assuming District service to mean one thing to all destinations to all people, which is not the case. I mean——

Q. Now, wait a minute——

Capt. DAVIS. Let him finish his answer.

By Mr. PRETTYMAN:

Q. Go ahead.

A. In other words, somebody going from some point in the District to Q–2 destination you call District service; somebody going to R–2 destination you also call District service. Those are not the same District services obviously.

Q. They are not?

A. No; they are not, for this reason——

Q. If the fellow is going——

Exam. MATTINGLY. Wait a minute. Let him finish his reasoning.

The WITNESS. If they were the same kind of service, then the people getting off at each end should be treated the same way, but they are not. One fellow can get on for a nickel. One fellow has to show he has ridden. Obviously the Capital Transit Company itself does not think it is the same; otherwise it would

1214 treat people getting off at those destinations who want to go on presumably the same number of miles the same, but you don't. That is why it is different service.

By Mr. PRETTYMAN:

Q. It is different service, Q–2 or R–2, but I am talking about different service. A fellow going to 7th and Constitution from any point in the District gets the same service as the fellow going to 19th and C from any point in the District.

A. He does not get the same service because when he gets off and wants to continue from there, he is not treated the same way; that is different.

Q. I see.

A. He is carried from one point to another, but they are different places he gets to, and he is treated differently, so it is different service.

Q. So that the fact that when he is going to Q–2 he gets a transfer to Q–2 costs him less than if he did not get a transfer according to your theory.

A. Let me explain that. If I were at the end of the Q–2 line and somebody came up to me and said, "Do you want to get a Pentagon bus; I have got a transfer and I will give it to you for 2 cents, "that transfer would be worth 2 cents to me because it would save paying another dime or token.

If I were at the end of R–2 line and a fellow said "I will
1215 sell you a transfer for 2 cents" I would not give him nothing for it, because I would not need it. I can get on for a nickel.

Q. That is plain enough. I am trying to get at your theory of what is clearly the District service paid by everybody in the District of Columbia for service throughout the District and saying that these particular people heading for Q–2 get that service for 2¼ cents less than everybody else in the District.

A. Isn't the District——

Q. I am asking if that is not your theory.

A. No; it is not, for this reason. Let me explain it this way. Because a person getting off at the Q–2 destination, and owning a transfer, which he can get merely by asking, has something that has value to him. He could have only picked up that value on that ride, and by the payment of his fare. That same person getting off with the same color ticket at the R–2 destination has not received anything of additional value to him at the end of that run.

Now, what made that additional value? The difference in the ride and the difference attributed to that ride by the Capital Transit Company. That value is reflected in there.

Q. According to your theory then his transfer is worth 2.25 cents, is that right?

A. It depends on whether you mean worth to the seller or
1216 worth to the purchaser. It is worth up to 8⅓ cents to the purchaser if he otherwise were to put in a token. If I were to get on, I would give him anything short of 8⅓ cents for it and make a profit on the deal.

Q. Now, your figure on 103, I think you testified the figure 6.2 miles based on the questionnaire——

A. I don't think that is—I think it is based on results obtained from the questionnaire.

Q. Yes. Whoever figured the questionnaires out, figured it at 6.2.

A. Yes.

Q. And your figure of 128,267 is based on Exhibit 1.

A. 101.

Q. 101.

A. That is correct.

By Mr. DUNLOP:

Q. Mr. Kosh, when a passenger gets on a District bus and goes to 19th and C, he pays a District fare, does he not?

A. Yes.

Q. And then when he gets on the Pentagon bus he pays 5 cents more, does he not?

A. Yes.

Q. When a passenger gets on a District bus and goes to 19th and C, he pays a District fare, does he not?

A. Yes.

Q. Now, I mean Constitution Avenue and 7th.

1217 A. Yes.

Q. How much more does he pay to go to the Pentagon Building?

A. You mean the passenger who happens to—they both pay a nickel.

Q. Another passenger from 17th and Constitution, how much does he pay to go to Pentagon?

A. A nickel.

By Mr. PRETTYMAN:

Q. So if two people get on away out in the distance, both going to the Pentagon, both use Capital Transit service, one goes to Q-2 and the other R-2, they both pay a District fare and a nickel; right?

A. That is correct.

Q. But according to your theory, the fellow that goes by Q-2 only pays 5¼ cents for his District service and the fellow going by R-2 pays 7.9 cents for the District service.

A. Now, let me refer you to somebody who can clear it up better than I can. The management of the Capital Transit Company can explain why they treat the ends of those which terminate both three and a half miles from the Pentagon differently.

Q. Is that explained in the record, Mr. Kosh?

A. If that difference were not there, there would not be any difference over here.

1218 Q. That has been explained in the record?

A. There must be a difference.

Q. Due solely to the fact the large number of people living within walking distance of 19th and C and walk to the terminal and as a matter of convenience to them they put that in.

A. And the reasons are entirely different.

Q. We are talking about people using a through fare from any point in the District of Columbia and not about people walking to the terminal. That is the people you are talking about.

Capt. DAVIS. Well, Mr. Kosh, looking at it from another angle for a minute, suppose you were at the Pentagon and wanted to go to the District. You could run it to the terminus of R-2 for how much?

The WITNESS. If you want to go from there to the R-2 terminus, presumably for a nickel.

Capt. DAVIS. If you want to go to 7th and Constitution, how much would it cost you on the Capital Transit line.

The WITNESS. As I understand the explanation here, either you have to show a pass, or you would have to deposit a District fare and a nickel.

By Capt. DAVIS:

Q. So if you did not have a pass, and if you wanted a ride on that bus, it would cost you how much?

1219 A. It would cost you a District fare plus a nickel.

Q. In other words, 13⅓ cents.

A. Or 15¢; that is right.

Q. Now, if you computed the revenue on that basis just from looking at that line, you would get a much higher figure here, wouldn't you?

A. Well, no, you would not. You would get exactly the same thing, because then you would have to attribute presumably this person is going back home. If you are going to go assuming that he goes to a show in between time or anything else—but if you have assumed, as we have assumed, that he is going from Pentagon home, you will get exactly this figure.

Q. When you are allocating the mileage basis, but if the man just went down to 7th and Constitution, it would cost him 13 or 15 cents?

A. That is right; if he decided to go that far only, he would have to pay a District fare and a nickel.

By Mr. DUNLOP:

Q. And, Mr. Koch, you say you get exactly the same thing? The man that starts at the Pentagon Building to go home pays exactly the same fare from the Pentagon Building to his home either way he goes, does he not?

A. I believe Capt. Davis said how much would be pay to go to 7th and Constitution. How, if he is going to continue home from there——

1220 Q. I am asking you how much he pays if he is going home.

A. That is a different question; he pays the same.

Q. Exactly the same either way he goes, doesn't he?
A. That is right.

By Mr. PRETTYMAN:

Q. Suppose he goes by R-2 from the Pentagon Building to 7th and Constitution Avenue by Capital Transit, what does that cost him?
A. The same thing, a nickel up to there only.
Q. Up to 17th and Constitution.
A. Let me get this question now; from the Pentagon to 7th and Constitution?
Q. By either route, by Capital Transit, how much does it cost him?
A. Presumably he would have to pay a nickel plus a District fare, and if he wanted to go to 19th and C, it would only be a nickel.
Q. And if he wanted to get off and walk from there on, that is all it would cost him.

By Mr. DUNLOP:

Q. Or if he wanted to get off and walk to Constitution Avenue, it would cost him a nickel, wouldn't it?
A. Yes. We can figure out lots of possibilities.
Q. If he went by R-2.,
A. Let me——
Q. And wanted to go to Constitution Avenue and 7th Street, it would cost him just a nickel if he walked from 19th
1221 and C, would it not?
A. Yes; but let me ask you this—let me explain it this way: If he wanted to go to a show and go on the way back from work, and he went down to 7th and Constitution, which is presumably near the theater section——
Q. How far is it from 17th Street to 15th Street?
A. It depends on which movie, now. Let me explain it this way: Supposing he wanted to go shopping at the department store, at Hecht's at 7th and G. If he went to 7th and Constitution, that would cost him—he went on a Thursday night; that would him a nickel plus a District fare. He transfer would not be good any more because of time elapsed. He would have to pay another fare.

By Mr. PRETTYMAN:

Q. Suppose he went by R-2.
A. Well, all the different possibilities you have pointed out.
Q. Suppose he went by R-2.
A. Well, if he road that Capital Transit facility, it would cost him two fares.

Q. A nickel and a District fare.

A. That is right.

Exam. MATTINGLY. Haven't we batted this around long enough?

Mr. LANE. Before Mr. Kosh gets off the stand, Mr. Examiner, I believe he was to produce a couple of records
1222 that he testified to yesterday regarding the OPA figures, regarding the regional committee, administrators.

The WITNESS. The basic figures were in Major Ristroph's possession. He has to get them.

Exam. MATTINGLY. Let us take a little recess while he is hunting them up.

(Short recess.)

Exam. MATTINGLY. We will come to order. Who is going to supply this next bit of information?

Mr. PRETTYMAN. I would like to ask Mr. Dickson a few questions.

Exam. MATTINGLY. All right.

(Witness excused.)

Exam. MATTINGLY. Mr. Dickson.

James F. Dickson recalled and testified as follows:

Cross examination by Mr. HILL:

Q. Mr. Dickson, what is I. & S. 24? What did that involve.

A. That was a cost case involving motor vehicles between Boston and Providence, Rhode Island.

Q. What was the issue there?

A. A rate proposition where the defendant elected to reduce his class rate and had to prove his cost.

Q. On general commodities?

1223 A. On general commodities.

Q. You say you testified in that case?

A. I was the principal witness in that case.

Q. For whom did you testify?

A. For the defendant.

Q. Your effort was to prove that the proposed rates would not be less than reasonable rates, is that correct?

A. My endeavors were to prove the cost of operating between Boston, Massachusetts, and Providence, Rhode Island.

Q. Your efforts were to prove that the costs were less than the proposed rates in sufficient amount so that those rates would still be compensatory, is that correct?

A. That is correct.

Q. And your effort, I take it, was along the same lines in Ex Parte No. MC–22, is that right?

A. On Ex Parte MC–2 I testified on the cost of a new regular route common carrier, as the cost applicable to the regular route common carrier.

Q. Irregular as against regular route?
A. That is true.
Q. Were you connected with any bus lines of any kind?
A. No, sir.
Q. Church is a truck carrier, is it not?
A. Yes, sir.

By Mr. PRETTYMAN:

1224 Q. Do you have Exhibit 101 before you, Mr. Dickson?
A. Yes, sir.
Q. Now, as I understand what you have done here, it is taking the system figures. In the first group you derived a system cost per mile, which is the last column; is that correct?
A. That is true.
Q. Then you multiply that by the number of miles for the Pentagon operation, and you get the second column that you label Pentagon.
A. That is true.
Q. So that your exhibit is a reflection of the system figures applied to the Pentagon operation.
A. That is right.
Q. Now, when you came to the cost per hour, second group, you took the number of miles on the Pentagon operation and multiplied them by 17 miles; is that right?
A. No, sir. I divided the miles applicable to the Pentagon operation——
Q. Oh, yes; you divided by 17.
A. That is right.
Q. All right. Now, that 17 miles is the speed or the miles per hour from one terminal of the Pentagon operation, round trip, back to the terminal, running time; is that right?
A. The over-all time.
1225 Q. What do you mean by the over-all time?
A. Round trip, including loading and unloading time.
Q. Well, you got the 17 miles—where did you get the 17 miles per hour?
A. I understand that that is what has been testified to here heretofore.
Q. Well, without knowing exactly what it was—did you read the testimony?
A. No, sir.
Q. So without knowing exactly what that 17 miles per hour was you nevertheless used that in this computation.
Capt. DAVIS. He just stated what it was.

By Mr. PRETTYMAN:

Q. I asked you without actually knowing from the testimony as to what the 17 miles per hour was, you used it in this computation?

A. I used that as a result of the testimony given at this hearing. If the testimony was wrong, then my calculation is wrong.

Q. Yes. Now, suppose the testimony was the running time. Would not you in figuring cost per hour of that have to include the time that the bus took to get to and from the original terminal?

A. Are the miles included?

Q. Yes, the miles are included.

A. To and from the terminal?

1226 Q. Yes.

A. Well, assume that that is taken into consideration——

Q. If it is not taken into consideration, your figure is in error.

A. To that extent that would be true.

Q. Now, then, assume that the overall time of the bus figured from the company records is 11.8 miles per hour; then what?

A. If it was 11.8 miles per hour, I would divide 427,663 miles by that 11.8 to arrive at my total productive hours on that operation.

Q. And if you did that, you would get a total cost per hour of $4.36 cents, according to your calculation.

A. I don't believe that I calculated that.

Q. No. How long would it take you to make that calculation using 11.8 per hour?

A. I don't believe that I can make that calculation.

Q. I see. How, you used for wages $29,969.

A. Based on the system average.

Q. That is the system average?

A. That is true.

Q. Computed on a cost per hour using 17 miles per hour speed?

A. That is true.

Q. Were you advised that the testimony is that the com-

1227 pany has the exact wage figure on this operation?

A. No, sir.

Q. You were not so advised?

A. No, sir.

Q. Now, then, in making a calculation of costs, would you use the exact figure if you had the exact figure on the manifests?

A. If I had the exact cost of wages applicable to that particular run for the Pentagon run, I would, if they were correctly allocated, and I was sure that they were correctly allocated. If they interchange in any way, I would use the system average.

Q. Now, then, your depreciation is based also on the system average; is that correct?

A. That is true. The reason for that is because I assume that these busses interchange inasmuch as you have used a system bus average on your variable expenses. That leads me to assume that the equipment is used elsewhere throughout the system and not applicable to the Pentagon run exclusively.

Q. And the system figure on depreciation of course is based on the over-all use of the busses in entire base period per day, isn't it?

A. It is figured on a per annum basis. I think it was 10 percent.

Q. Figured on a per-annum basis, 10 percent; that is
1228 right. And then the system figure would be to reduce that to the per hour or per mile——

A. It is on a time basis.

Q. To include your base figures, would it not?

A. That is right. It is on a time basis, treated as a time basis.

Q. And if busses were used only in rush hour, then in translating the total time basis of depreciation to either a per hour or a per mile basis, you would have to use the number of hours of actual operation, wouldn't you, in rush hours?

A. Oh, yes. I would want the exact number of hours of operation.

Q. And you would not care to make that computation for me. That is all right; I will have somebody else make it.

Col. BARRON. How long would it take you to make that?

The WITNESS. I don't believe it is necessary that I make the computation, Colonel, on the stand.

Mr. WHITTLESEY. Mr. Commissioner, may I ask that the witness be requested to answer the question?

Mr. PRETTYMAN. He just said he does not care to make it. That is all right with me. I will have somebody else make it.

Mr. WHITTLESEY. He can answer how long it would take him to make it.

Exam. MATTINGLY. Oh, now, let Mr. Prettyman go on, please.

1229 The WITNESS. It would be purely an estimate, my dear young man.

Mr. PRETTYMAN. I don't believe I have any other questions.

Exam. MATTINGLY. Any other questions of this witness?

By Mr. WHITTLESEY:

Q. Mr. Dickson, do you recognize that rush hour service is more expensive than base hour service, base period service?

A. I would like to have you clear that point up, from what viewpoint you are asking that question. In some cases the load factor would probably decrease.

Are you talking about vehicle cost or passenger cost?

Q. Well, let me ask you this question: You have used here a cost per mile derived from over-all system figures, have you not?

A. That is true.

Q. And was not your direct testimony to the effect that a computation, whereby you arrive at a cost per mile or cost per hour, does not mean anything?

A. That is true if you combine time and variable expenses. It does not mean anything. You have got to keep them all separate all the time. If not——

Q. Now, in computing your variable costs, and arriving at a cost per mile for those, that is an average cost.

A. That is cost per bus mile; average cost per bus mile;
1230 variable expenses only.

Q. Now, that is also true, is it not, of your fixed expenses or fixed costs, except that it is based on an hourly basis?

A. That is true.

Q. But if you used a bus only four hours out of 24, then would you not have to telescope within those four hours your depreciation charge?

A. If you only used a bus for four hours, and that is all you used that bus for, of course you would have to have your depreciation included in that four-hour cost.

Q. And if you used 80 percent of your fleet only during a rush hour period, or only during two rush hour periods a day, aggregating a total of four hours per day, then your cost, either per mile or per hour, or aggregate of both, would be more during those rush hour periods than during the remaining 20 hours of the day, wouldn't it?

A. That question is not clear to me. Restate that.

Q. All right. You have a cost per passenger per trip on Exhibit 101, don't you?

A. Yes, sir.

Q. And is that an aggregate of both mileage cost and hourly cost?

A. That is true.

Q. So that you have combined the two.

1231 A. That is true, after computing them first on an hourly and mileage basis.

Q. Now, my question, Mr. Dickson, was this: That is seeking to arrive at a cost, such as you have derived here of 3.572, have you taken into consideration the excessive costs that might be attributed there to by reason of the fact that the Pentagon service is solely and exclusively a rush hour service?

A. Definitely.

Q. Actually haven't you only used the average figures?

A. I used the actual use factor, if that is what you are referring to.

Q. And arrived at the overall average.

A. I have used the actual hours operated throughout the system or the actual use factor, if you will.

Q. Whether you average hours or miles, doesn't that have a leveling effect insofar as your figures are concerned?

A. I did not use average miles or average hours; I used actual hours and actual miles.

Mr. DUNLOP. And averaged those costs?

The WITNESS. And used system average costs, that is true.

By Mr. WHITTLESEY:

Q. All right. You used average costs, or average cost per mile and average cost per hour to arrive at the total figure. Isn't that figure derived by a leveling process?

1232 Capt. DAVIS. I don't think that question is very clear; it is not clear to me.

The WITNESS. It is not clear to me. I would like to have that cleared up.

By Mr. WHITTLESEY:

Q. You conceded a moment ago that if you had 80 percent of your fleet used only in a rush hour four hour period your cost would be more excessive, would be greater in that four hour period than your average. Isn't that right?

A. I don't know what the average is. What average are you referring to? You were telling me that you have an 80 percent productivity or an 80 percent use factor, and naturally if you have an 80 percent use factor, that is the use factor you will have to use to determine the cost applicable to any run.

Q. In taking into consideration these figures, and using your expression, use factor, did you consider the total number of hours that were included in the first seven months of 1943?

A. Yes, sir.

Q. To arrive at a use factor?

A. Yes, sir.

Q. And where is that portrayed in this exhibit?

A. Total hours 1,590,792.

Q. All right. Now, how many hours——

1233 A. That is the total hours operated throughout the system.

Q. And do you know how many busses that applied to?

A. I believe it was 1,249. Now, I am not sure, but I believe that is the correct figure.

Q. Did you multiply 1,249 by the number of hours that there were in the period, July 1 to July 31?

A. Yes, sir, I did. I multiplied it by 24.

Q. Then you multiplied it by 1249.

A. No. In other words, to get the—what you would consider a theoretical 100 percent use factor, you would have to take the 1,250 vehicles, multiply by 24 hours a day; and multiply that by the number of days in the period to arrive at a theoretical 100 percent use factor.

Q. But you did not do that?

A. It wasn't necessary. I had the actual hours of operation.

Q. Just answer my question. You didn't do that.

A. No, sir.

Mr. WHITTLESEY. That is all.

Exam. MATTINGLY. Any other questions of Mr. Dickson?

(No response.)

Exam. MATTINGLY. That seems to be all.

(Witness excused.)

Exam. MATTINGLY. Is Mr. Kosh going to supply us with some data later.

Mr. LANE. I think the exhibits have to be made, Mr. Examiner. I talked to him about it.

1234 Mr. KOSH. Mr. Deale gave me a copy of the letter he sent, and I will show it to Mr. Lane, and see if that is the information, so I can get extra copies made.

Mr. LANE. That is what I want.

Mr. KOSH. I will have extra copies made.

Col. BARRON. I don't see the relevance of it. It is some of these regional committee reports. I don't see the relevancy of it.

Exam. MATTINGLY. Well, I think Mr. Lane's report is already in the record so we might have the others too.

Col. BARRON. If they do put them in, I would like to have Mr. Ristroph explain them, because he made them up.

Exam. MATTINGLY. That is perfectly agreeable to have whoever put them in make whatever explanation is necessary.

Where do we stand now? Any more witnesses?

Col. BARRON. We are through, sir.

Mr. PRETTYMAN. I want to ask Mr. Heberle one question before we get through.

Exam. MATTINGLY. Well, I understand the military department really is through except for putting in these statements in explanation by Major Ristroph.

Col. BARRON. We can do that now if they want it.

Exam. MATTINGLY. Well, I thought you said you would have to have some copies made.

1235 Col. BARRON. We could supply them later.

Mr. KOSH. Two things Mr. Lane wanted; one was a copy of the analysis. We have enough of that. The other was figures sent to us by the regional committee. We just got one copy of that from Mr. Deale, and Mr. Lane indicated he did not want one without the other, and I am willing to have copies made and submit them both to him, or you can have the explanation on one now, and all you will have to do——

Mr. QUIRK. There won't we any tomorrow if we can finish tonight.

Mr. KOSH. Well, we can mail them to you.

Mr. QUIRK. If we do something, instead of talking about it, we might finish this evening.

Col. BARRON. There is one tabulation Mr. Lane has not yet given us, and that is the break-down of his per bus mile cost.

Mr. LANE. That is being prepared for you and will be ready at the same time that the scheduled operations through these various points which you asked me to prepare for you will. They are both being prepared now. If this should close, why, I presume we can introduce them into the record subsequently and furnish copies.

Mr. HILL. Mr. Examiner, may I ask whether the Commission has been furnished with a copy of the paper I have here in my hand, entitled, "You can keep that extra fare" and

1236 whether that has gone in the correspondence section of the docket?

Mr. Examiner, the War Department has offered and had placed in the correspondence section a petition signed by a number of the employees of the War Department. I don't wish to make any point of putting this document in as an exhibit, but I would like to have it go in the correspondence section.

Exam. MATTINGLY. All right.

Mr. HILL. It is a document issued by War and Navy Branches, Local 1, United Federal Workers of America, C. I. O., making certain suggestions to the employees of the government installations as to how they may influence the action of the Commission in this case.

Exam. MATTINGLY. Give it to the reporter and it will be filed in the correspondence section.

Col. BARRON. I have never read it personally. I don't know what it is all about.

Mr. PRETTYMAN. I want to ask Mr. Heberle one or two questions.

Col. BARRON. We understood they wanted this in and we think if so, the Major ought to do it now.

Exam. MATTINGLY. Well, all right.

Major PAUL L. RISTROPH was recalled and testified as follows:

Col. BARRON. We preface this with the statement that we
1237 do not believe it has any materiality.

Direct examination by Col. BARRON:

Q. Will you describe that, Major Ristroph, and tell us what it represents, and what it amounts to?

A. This which I have in my hand is entitled "Effect of Proposed Trans-Potomac Bus Fares on Minimum Cost"—and I would like to emphasize the word "minimum"—"Minimum Cost of Bus Transportation For War Department Personnel Employed at the Pentagon and at Graveley Point."

Exam. MATTINGLY. That will be identified as Exhibit 104.

(War Department Exhibit 104, Witness Ristroph, marked for identification.)

The WITNESS. This was a statistical analysis of a proposal that I understand that the Washington Regional Committee of the Defense Transportation Administrators made some time ago.

We never did receive that proposal formally, but it came to us through the O. P. A.

This compilation is based on a peak hour check, that is a morning and evening rush hour period. It was not a 24-hour check, and results derived from these questionnaires as to the distribution of personnel and their fares paid.

Exam. MATTINGLY. Who prepared that? Who did all the computing that is on Exhibit 104?

1238 The WITNESS. It was done under my supervision.

Exam. MATTINGLY. Well, I don't mean personally; it is your work under your supervision?

The WITNESS. Yes, sir. We pulled in some War Department personnel on that.

Exam. MATTINGLY. All right.

The WITNESS. I emphasize the basis under which this was prepared so there will be no misunderstanding and also the comparison was made on the basis of the then existing minimum possible cost to passengers provided they avail themselves of the cheapest form of transportation, and the minimum cost of transportation, which would be incurred by those same passengers under the proposal made at that time.

By Col. BARRON:

Q. Which you were considering informally at that time?

A. That is right, sir. It has not been presented to us, except through OPA.

Q. Has that been a number of months ago? Do you remember about when that was?

A. This compilation is dated the 4th of June 1943.

Exam. MATTINGLY. What are the important figures? What is the substance of it?

The WITNESS. In substance, on the basis which I have stated, it shows that the proposal would have resulted in an in-
1239 crease in cost of approximately $20,000 annually for the employees located at the Pentagon, and would have resulted in a saving of approximately $10,000 to the employees at Graveley Point, or a total increase in cost of approximately $10,000 over-all, on a per passenger basis, taking all persons who rode these vehicles, an average loss of 75 cents per year, which is relatively insignificant.

Exam. MATTINGLY. Am I correct in understanding that this compilation is the basis for the statements made in the Secretary of War's letter of June 16 to the Chairman of this Commission, which is Exhibit No. 7 in this case?

The WITNESS. I would have to identify it, sir; that is right, sir.

Mr. HILL. Mr. Examiner, I want to object to this exhibit on the grounds that it is based in part on the questionnaire and those who prepared or signed or typed their names on the returns of the questionnaire are not here present for cross examination, and I would like to ask that I be permitted to renew my objection to every exhibit which has thus far been proffered which is based in whole or in part on these returns to questionnaires on the same grounds.

Exam. MATTINGLY. The record will so show.

Cross-examination by Mr. LANE:

Q. It was on the basis of this compilation that you informed the O. P. A. that the so-called planning report was not satisfactory; isn't that correct?

1240 A. That is an assumption that I made the information—I don't know whether you assume in the use of the pronoun "you" that I did or the War Department, Mr. Lane. But the analysis—I prepared that analysis at the direction of the War Department and the conclusion stated from it was drawn by the War Department and submitted to O. P. A. and I. C. C.

Redirect examination by Col. BARRON:

Q. This proposal, was it considered by the General Staff and the higher authorities?

A. To the best of my knowledge it was, Colonel.

Re-cross-examination by Mr. LANE:

Q. And it was considered by the General Staff, you say?

A. To the best of my knowledge.

Q. Who presented it to the General Staff, if you know?

A. I presented it to my immediate superior, whom, I presume, presented it to his, whom I again presume presented it to the General Staff.

Q. And who wrote the memorandum that accompanied it, the presentation; you?

A. The presentation?

Q. Yes.

A. I had something to do with it.

Q. It went through regular channels, did it?

A. I did not write it in its entirety.

1241 Q. Did it not go through regular channels to the General Staff?

A. That is my understanding.

Q. And was it not predicated upon a memorandum from you, endorsed by General Lewis?

A. It was not predicated upon a memorandum from me, but upon a memorandum from my immediate superior was where it originated. I don't know whether it originated with Col. Isobel or General Lewis to be truthful about it at this time.

Q. Whoever signed it, you prepared it?

A. Not in its entirety; I had something to do with it.

Q. A copy of this exhibit 104 accompanied the memorandum, isn't that correct?

A. To the best of my memory it did, or knowledge of the facts. I did not present it to the highest authority.

Q. And who conveyed to O. P. A. the War Department dissatisfaction with the so-called Blanning report?

A. I think that was conveyed by the Secretary of War, although I am not sure, Mr. Lane.

Q. Directly by the Secretary of War to O. P. A?

A. I am not quite sure as to that. I would have to check back.

Q. You did not do it?

A. I was in contact with O. P. A.

1242 Q. And you did not convey the War Department's disapproval of the so-called Blanning report to O. P. A. directly?

A. I don't recall, sir, whether I was the instrumentality of it or whether it was otherwise. I will have to check up on that.

Q. Well, you certainly know——

Exam. MATTINGLY. Well, wait a minute. We have spent a lot of time on this. Of what importance is it whether Mr. A or Mrs. B told something to somebody else?

Mr. LANE. It is peculiar to me.

Exam. MATTINGLY. It may be peculiar but we are not interested in it if it is merely peculiar.

Mr. LANE. That is all the questions I have.

Col. BARRON. I can tell what happened if he agrees to accept it. The Secretary wrote the Administrator a letter——

Exam. MATTINGLY. Such an unimportant detail. I don't know why we are taking so much time with it.

Mr. LANE. Well, if Mr. Kosh will identify this as the report about which he testified yesterday, why, I would be very glad to have it go in the record as 105.

Mr. KOSH. Well, yes; in my testimony I said that—that the report that the Regional Committee sent to the O. P. A. contained a figure indicating a saving to riders of around $190,000.

1243 To the best of my knowledge now this is the report and the figure is $196,500.

Mr. Deale tells me this is the thing they sent us and I believe that it is. I have not seen that file for some time but to the best of my knowledge now, this is it.

Exam. MATTINGLY. That will be marked as "Exhibit 105."

(War Department Exhibit 105, Witness Ristroph, marked for identification.)

Exam. MATTINGLY. Are there any further questions?

Mr. LANE. Yes, I have two or three questions on this Exhibit 104.

By Mr. LANE:

Q. Major Ristroph, this Exhibit 104 is your computation of the savings or expense that would be entailed by the adoption of the so-called Blanning report fares; is that correct?

A. I have no knowledge of it as the Blanning report. I have knowledge of it as the report which was submitted to O. P. A. by the regional committee of the Defense Transportation Administrators, and it is correct under the assumptions which I have stated in presenting it.

Q. Now, what does it mean under item 2 of this exhibit "Can you use Q-2"?

A. That is people who were paying higher rates of fare on the Virginia bus companies when they presumably could have used the Q-2 line at the same time. That is people who were using

1244 these bus lines at the same time that the Q-2 was available, at this joint fare. People who had previously ridden in the District and people who subsequently completed their journey—over to—let's see; I think that is the Pentagon—yes.

Q. Well, is it correct to say that this is purely a hypothetical allocation of passengers to the various routes, and not predicated upon any actual flow of passengers.

A. No, I don't believe that would be correct to state that.

Q. Well, when you say "can use Q-2" you mean that there are certain numbers of people who do not us it that could us it; isn't that correct?

A. That is right.

Q. Therefore it is hypothetical, isn't it?

A. I would have to look up the definition of that word. I don't know as I would agree with that, Mr. Lane.

Col. BARRON. Doesn't it show facts as far as it goes?

Mr. QUIRK. Well, if they don't use that for any reason now, they might not use it even after this other so-called Blanning plan were established; isn't that true?

The WITNESS. There is no way of telling exactly what people will do, Mr. Quirk.

By Mr. QUIRK:

Q. Nevertheless, based on the assumption you would make a calculation to show a loss, wouldn't you?

A. No; those assumptions that were made there were to place them as to what they could get by with now, paying the
1245 minimum they would have to pay now as against the minimum that they would have to pay later.

Now, you do not know that right now all of the people are not paying the least fare that they could pay. You know that unless they were furnished no alternative under some other planned fare you would still have people who are paying fares that are not most logical and those are rather hard to determine as to what people would do. So this was planned on the minimum basis.

Q. Your own exhibit put in by your side indicates about 40 percent of the people which you checked were using higher fares than are necessary.

If you were to make a calculation of savings or losses to the government, one might very well say, "Well, there is a saving they could make through their own efforts, using their own intelligence and ingenuity."

A. Yes; there are other factors considered in the fares. There are lots of elements that enter into it, more than mere physical transportation.

Col. BARRON. Just one question there.

Redirect examination by Col. BARRON:

Q. You are not testifying that this 40 percent——

A. No, sir; I know nothing about that figure. If the records state that it is 40 percent, all right, but I don't

Q. Wait a minute now. Another question. The question of it being necessary is what I don't quite get. These people, some of them, do they not, live in areas where it is not practical for

them to use other means of transportation, so to that extent why it may be necessary for them to use higher transportation.

A. That may very well be true. They may have to travel a circuitous route and consume an undue amount of time to avail themselves of the lower fare. All of those are factors in the individual decision which makes up the conglomerate effect.

Re-cross-examination by Mr. HILL:

Q. Wait a minute. You are not intimating that he had to travel a circuitous route to the Pentagon instead of a straight dime to the Capital Transit, are you?

A. I have not said that.

Mr. QUIRK. Colonel, when you finish checking your Exhibit 18, you will find that 40 percent of the riders on that exhibit use higher fares than were available.

Col. BARRON. I know that.

Mr. QUIRK. All right. That is all I have.

Mr. PRETTYMAN. I still have my question that I would like to ask Mr. Heberle.

Exam. MATTINGLY. Anybody else have any question of
1247 the Major?

(No response.)

Exam. MATTINGLY. I believe that is all.

(Witness excused.)

J. E. HEBERLE was recalled and testified as follows:

Direct examination by Mr. PRETTYMAN:

Q. Directing your attention to Exhibit 101, that exhibit computes the number of hours for the Pentagon operation, for the seven-months period.

Do you have the exact number of hours from the company records?

A. I do.

Q. Will you state what it is?

A. 36,208 for the seven-month period.

Q. Was that miles per hour?

A. 11.8.

Q. Why is there difference between that figure and the figure of 17 miles per hour mentioned by Mr. Locke the other day?

A. The other day's figure mentioned by Mr. Locke was the running time in one of the routes on the Pentagon service.

On the other hand, the bus hours that I have given include all of the bus hours, of both routes, and they also include the necessary hours of the bus running from the Pentagon to
1248 storage point, or storage point to Pentagon.

Q. Now, Mr. Heberle, have you made a recomputation of Exhibit 101 using the exact number of hours instead of this computed number of hours used on Exhibit 101?

A. I have.

Q. What is the cost per passenger per each trip shown by your recomputation of Exhibit 101?

A. For the elements exclusive of return on investment, based on Exhibit 101, it is 4.36.

Q. And adding 7 percent on the investment, in Pentagon operation.

A. That is stated as 0.64 of a cent in Exhibit 89; adding that to 4.36 makes exactly 5 cents.

Mr. PRETTYMAN. That is all the questions I have.

Mr. WHITTLESEY. I have a question of Mr. Heberle.

By Mr. WHITTLESEY:

Q. In examining Exhibit 101, can you by such examination determine whether any recognition was made of excess cost for rush-hour service.

A. There is none, neither to be found on the exhibit, nor from my understanding of the witness' testimony.

Mr. WHITTLESEY. That is all.

Mr. QUIRK. No questions.

Cross-examination by Capt. DAVIS:

Q. Mr. Heberle, how did you figure that 36,000 hours?

1249 A. That is the actual bus hours taken from the records.

Q. Will you describe the records that are kept on which you base that?

A. The manifests; each day there is a manifest for each run, and including work at Pentagon and from this manifest we obtain the actual information with respect to payroll and the actual information with respect to the hours, and also the miles that are operated on Pentagon.

Q. Well, now, what happens when you start the bus on the Pentagon run and then use it in another run and put it back on the Pentagon. How are those records kept?

A. I do not know of any such case, but let us split your question in two.

Q. All right.

A. You asked what happens to a bus that operates on Pentagon, and that leaves Pentagon.

Mr. PRETTYMAN. Mr. Examiner, wasn't this all gone into in great detail earlier in the case?

Exam. MATTINGLY. I thought it was pretty well covered.

The WITNESS. I have given this explanation before, but I would be glad to repeat it if the Commission wants it.

Capt. DAVIS. No, no; I will withdraw the question.

By Capt. DAVIS:

Q. So that in effect this includes all the time going back and forth to the garage, whether or not this bus is used elsewhere.

1250 A. No.

Mr. PRETTYMAN. Now, Mr. Examiner, all that was gone into in minute detail. The witness did not testify to that. He explained in detail where he got the time when he first put in this exhibit. If we are going to go all over the case we will be here for days.

Capt. DAVIS. Well, I will withdraw the question. I believe the record speaks for itself on it. That is all.

Exam. MATTINGLY. You are excused.

(Witness excused.)

Col. BARRON. I would like to suggest at this point that the original records from which that computation was made be produced for examination. I would like to see the basic data on that.

Exam. MATTINGLY. Will you do that?

Mr. HEBERLE. Is that addressed to the witness?

Col. BARRON. Yes, sir; that is.

Exam. MATTINGLY. I was going to ask you if the records with respect to this matter are available, and if you could bring them in here.

Mr. HEBERLE. I will be glad to. When I speak of that, I am speaking of the records on which are entered this information that is taken from the manifest.

Exam. MATTINGLY. Is that what you had in mind, Colonel?

Col. BARRON. Yes, sir. Is that sufficient, Mr. Kosh?

1251 The original manifest records are what the time is taken from.

Mr. HEBERLE. The manifest records for a day are very voluminous, for one day.

Exam. MATTINGLY. Are they more voluminous than these questionnaires?

Mr. HEBERLE. Speaking relatively I would say that four days records would be the equivalent of the questionnaires that were brought in here. That is all of the manifests.

Mr. PRETTYMAN. Mr. Heberle, in the regular course of business those entries are made off the manifest into another control record of some sort?

Mr. HEBERLE. These manifests are handled by a crew of—first handled by a crew of some 15 experienced checkers. It is necessary to check time and miles and hours and all the other functions that are on here. The function taking the greatest amount of

time is checking the time and this information with respect to Pentagon is taken off from the manifest records. The time is taken off by this group of 15, and the miles by another group and the hours by another clerical function.

Col. BARRON. Perhaps we could expedit' it by bringing the checkers down and letting them testify. It would not take long.

Exam. MATTINGLY. Off the record.

1252 (Discussion off the record.)

Exam. MATTINGLY. On the record.

Col. BARRON. Mr. Dickson thinks a spot check perhaps can be made to make some check that will be worth something, in a couple of days. I don't like to delay the proceedings for any reason, and I think if the Commission feels it would like to have this information checked, why, we will go ahead and do it. Otherwise we won't.

Exam. MATTINGLY. Well, I don't think it is up to the Commission. We have evidence on the record here that the facts are so and so. If you want to dispute those facts and say that they are different, it is up to you.

Col. BARRON. Well, of course this is an investigation by the Commission.

Exam. MATTINGLY. I understand the Commission does not make investigations to check up on evidence, sworn evidence, unless that there reason to believe that that evidence is incorrect.

Col. BARRON. I am not going to ask that any time be allowed to make this check. If the case is going to go ahead—I don't know what they are going to do—to introduce some other evidence, I understand Mr. Whittlesey has some, while he is proceeding to do that, if he is going to, we will be glad to go ahead.

Mr. WHITTLESEY. I don't have anything, Mr. Examiner.

1253 Mr. PRETTYMAN. Capital Transit has nothing further except a motion or two; and then when Exhibit 60 was prepared, your Honor, we did not have but one copy and I have had those copies made now.

Exam. MATTINGLY. Off the record.

(Discussion off the record.)

Exam. MATTINGLY. On the record.

Mr. PRETTYMAN. I want to interpose a motion for the record that the investigation be dismissed and the proceedings dismissed on the basis of the record.

Mr. HILL. I join in that motion.

Mr. QUIRK. I join in that motion.

Mr. WHITTLESEY. I join.

Exam. MATTINGLY. The motion will be noted on the record, and of course you do not expect any action to be taken on it at this time; nor will there be.

Mr. PRETTYMAN. Then just once more on the record, Mr. Examiner, I want it to appear, our understanding that if the Commission should overrule Mr. Patterson's ruling on the so-called over-all evidence as proffered that our cross-examination has been reserved, and we will then want to cross-examine and also will want to present rebuttal testimony.

Exam. MATTINGLY. If we are going to get through here, tonight, I have a few remarks to make on that subject myself. Do you have some evidence?

1254 Lt. MATTHEWS. One thing is this matter of the exhibits which were identified, but not admitted into evidence pending cross-examination. I understand that all that cross-examination is now completed, and I would like to move that they be introduced in evidence.

Exam. MATTINGLY. That motion will be considered.

As I say, I will have some remarks to make on the general subject if there is no more evidence now to be presented by anyone. In the present state of the record——

Mr. QUIRK. Mr. Examiner, I have no more evidence, but I want to make the same statement about those over-all financial exhibits in the event the Commission should overrule the ruling of Commissioner Patterson. We want the same privilege to meet that situation in whatever way and time seems desirable.

Mr. HILL. That is the Position of the Arlington and Fairfax, Mr. Examiner.

Mr. AWALT. Mr. Examiner, would you please have the reporter read the motion that was made by Capt. Matthews?

Exam. MATTINGLY. It was merely that exhibits that were offered but not accepted be admitted.

Mr. AWALT. I understood him to say that all the cross-examination had been completed on that.

1255 Lt. MATTHEWS. The exhibits I refer to particularly were those which were introduced by Major Ristroph and Capt. Loughran.

Mr. AWALT. I mean they did not deal with the over-all.

Lt. MATTHEWS. That is right. I was going to explain that further as soon as I had a chance. The ones I referred to, Mr. Examiner, were those which were introduced by our various witnesses dealing with the statistical material for the most part, some of which are received and some of which were merely identified to be received if proper upon the close of cross-examination, and I think that is probably a separate matter from the question of over-all.

If to any extent it does involve over-all figures, as——

Mr. DUNLOP. It would come under this same basis.

Lt. MATTHEWS. I have nothing to say about what objections you made.

Mr. DUNLOP. We made a general objection.

Mr. QUIRK. Aren't you talking about the exhibits put in in behalf of the Navy similar to the War Department exhibits?

Lt. MATTHEWS. The same is true of War Department exhibits, as a matter of fact.

Mr. QUIRK. Yes. We are not raising any point about that.

Lt. MATTHEWS. I understood they would be received in evidence.

Exam. MATTINGLY. Off the record.

1256 (Discussion off the record.)

Exam. MATTINGLY. On the record.

Will you please, Colonel, state what the position of the War Department is with respect to the request which you have made for the production of information or a subpoena duces tecum dealing with the segregation of operations to and from the installations concerned from the other operations of the bus companies, that is the bus companies other than Capital Transit?

Col. BARRON. Generally it is our view that that kind of information can be produced. How practical it may be to try to do it in a short length of time, I am not prepared to say. I don't know how they are equipped to get it, and I don't know just how long it would take them to get it.

Exam. MATTINGLY. Well, of course, all I know is what has been stated on the record here with respect to the necessity for checks, and the scarcity of auditors and manpower in general.

Col. BARRON. There is certainly something to all that, and I won't argue with them about that. Of course, our view is that it is not necessary that any segregation be made. Our view is that this case should be treated from the over-all standpoint as stated in our petition. We don't think that because one
1257 line may or may not be showing a profit, that that is of any great moment. We think that the over-all situation should be the criterion and not the operation of any specific line.

Exam. MATTINGLY. Am I correct in understanding that insofar as those requests and petitions are concerned, that you are not pressing them at this time? Your position is if the Commission thinks they are necessary or desirable, it should take whatever action it feels is necessary to get them, but as far as you are concerned, you are content to let the matter rest where it is. Is that a correct statement?

Col. BARRON. Yes; I think that is a fair statement of the case.

Exam. MATTINGLY. Now, then, with respect to these over-all figures, they have had more consideration since the matters came

up and I am now authorized to say for Commissioner Patterson, with his full approval, that he still adheres to his ruling with respect to the introduction of the income tax returns and the excess profits returns. He is agreeable that the net figures, final figures, taxes paid, shall go in the record, but he adheres to his ruling as to the rejection of the copies of the returns themselves.

He also adheres to his original ruling insofar as it relates to values or any other rate base for the computation of a rate of return for the over-all operations of these systems. Other-
1258 wise, so far as over-all figures are concerned as to income, gross and net and whatever it takes to make those figures, he will admit evidence of that character in the record himself.

Col. BARRON. I think the case can be solved on the basis of such evidence. I mean that I think a decision can be reached without the valuation question being gone into.

Exam. MATTINGLY. So as I understand it with that ruling by the Commissioner, you have nothing further to submit to the Commission itself for a ruling.

Col. BARRON. I think you have ruled in our favor, generally speaking.

Exam. MATTINGLY. Well, we have ruled in your favor except to the extent of valuation or the rate base figures, and the income tax returns.

Col. BARRON. Of course the income-tax returns are material in view of the basic data obtained from the public utility and the reports filed with your own Commission.

Mr. QUIRK. The effect of that ruling then, Mr. Examiner, is that the rate base or investment or net worth figure——.

Exam. MATTINGLY. It covers all of those.

Mr. QUIRK. Used by Witness Koch are not admitted in evidence.

Exam. MATTINGLY. That is correct.

Mr. QUIRK. But that the operating expense, gross revenues and net returns from operations are admitted.

1259 MR. DUNLOP. As per the books.

Exam. MATTINGLY. Correct.

MR. QUIRK. Not as per the income-tax returns.

Exam. MATTINGLY. The income-tax return information as far as they are concerned is restricted to the taxes paid, and with that I understand can be shown by other documents, and therefore we don't need the income-tax returns at all.

Col. BARRON. That is right. No net worth figures are out, as I understand it. They have testified themselves to it.

Exam. MATTINGLY. Well, Mr. Kosh put in some net worth figures. We are not admitting anything that goes to a total value upon which a rate return could be applied.

Mr. HILL. Mr. Examiner, there are a number of respondents here. Could we have a short recess to consult for a moment?

Exam. MATTINGLY. Yes, sir.

(Short recess.)

Exam. MATTINGLY. Well, come to order, gentlemen.

Col. BARRON. I would like to have the Commission, in case it desires to consider the reports filed by the Capital Transit Company for the year 1941 with the District of Columbia Public Utilities Commission, which we will procure in certified form and transmit copies to the Commission and to counsel, if they desire them. I don't believe that you wanted anything other than '41. We have '42 in the record.

1260 Mr. PRETTYMAN. How about the '40 also?

Col. BARRON. I don't think '40 will be necessary; just '41 is all we desire.

Exam. MATTINGLY. Unless you would like to have it.

Mr. PRETTYMAN. We reserve the right to put in a prior year.

Col. BARRON. In addition to that we want to call to the Commission's attention and ask them to consider the ICC reports filed by the three Virginia respondents for the year 1941 in addition to the data already in the record, from those same sources.

Exam. MATTINGLY. In other words, in the data in the reports of the Virginia companies that you referred to for the year '42.

Col. BARRON. Yes; similar data may be presented for the preceding year.

Exam. MATTINGLY. Similar data in the record by reference to the preceding year.

Mr. HILL. We reserve the right to put in prior years if we wish.

Exam. MATTINGLY. Yes; that may be understood.

Mr. QUIRK. Well, now, how does Col. Barron intend to put the '41 figures for the Virginia lines in? Are you going to attend to that?

Col. BARRON. Only by reference.

1261 Exam. MATTINGLY. Incorporate it by reference the same as the report that was referred to on the record.

Mr. HILL. Well, I understood he said he would put them in physically.

Exam. MATTINGLY. You may refer to the prior years or prior year, as you feel is necessary.

Mr. HILL. All right. I misunderstood; thank you.

Mr. QUIRK. Mr. Examiner, counsel on this side of the table have had a short consultation during the recess and has asked me to make this very short statement on behalf of each of us and all of us.

First, we take the same objection to the rulings that the Examiner has now made about the set of over-all financial figures that

we made before, namely, that those figures in a case of this kind are irrelevant and immaterial.

Second, we assume that briefs will be filed and counsel on this side have asked me to request 45 days.

Third, they have also asked me to request that the usual report of the Examiner be served as contemplated by the Rules of Practice.

And fourth, we assume that oral argument will be granted in a case of this kind.

Mr. QUIRK. Of course we make the same objections to the use of the over-all figures for other years, although with your
1262 ruling, which I imagine will stand, we might refer to some of them.

Exam. MATTINGLY. Yes; your objection has been noted on the record, and the ruling will stand.

Mr. QUIRK. I wanted it understood, though, as far as the A. B. and W. is concerned we will agree with the Colonel about the use of the figures for the year 1941 and 1942, with the objection that I have made.

Exam. MATTINGLY. That is clear, I think.

Now, I don't believe you need to say anything more on the subject, Colonel. Of course, this is an investigation by the Commission. If it is possible for the Commission to determine if it thought the record was sufficent to arrive at the decision, until a record is made, the Commission will consider this matter and determine whether it is satisfied to go ahead with the decision of the case on the prepared record, or whether it will undertake one way or another to have that record amplified. That will take a little time and the brief dates will therefore not be fixed at this time.

I also stated that Commissioner Patterson has decided that there is to be no proposed report in this case, so that at sometime in the near future I hope the Commission will issue a notice fixing the time for filing briefs, and if possible a date for argument in the same notice.

Is that clear? Does anybody else have any remarks to
1263 make now on the subject?

Mr. HILL. Yes; I would like to ask, Mr. Examiner, if anything will be done in the way of oral argument that it be not fixed earlier at least than the middle of October. I have already had all of my office plans upset by this proceeding by our failure to obtain a continuance the other day, and I hope we won't be further upset by having oral argument set too soon.

Exam. MATTINGLY. Well, the Commission will have to allow reasonable time for briefs and replies, and in the regular course of business the oral argument would not be assigned until the re-

ply briefs are in, so that that will clear your date very nicely, and then some.

Mr. HILL. I understand, Mr. Examiner, some notice of brief dates and argument dates will be set?

Exam. MATTINGLY. If there is no other evidence to be presented at this time, the proceeding is closed for the time being, subject to reopening in case the Commission decides to reopen them.

You will either get a notice of further proceedings in the matter or a notice as to brief dates and argument date.

Mr. HILL. Yes, sir.

Exam. MATTINGLY. Then let the record show that with the exceptions of the matters that I said would be rejected that all
1264 the other exhibits and evidence which have been presented are received in evidence.

(War Department Exhibit 104 and 105, Witness Ristroph marked for evidence.)

We will now adjourn.

(Thereupon, at 5 o'clock p. m., the hearing in the above matter was closed.)

1265 Before the Interstate Commerce Commission

Docket No. 28991

IN THE MATTER OF PASSENGER FARES BETWEEN THE DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM,
INTERSTATE COMMERCE COMMISSION,
Washington, D. C., November 9, 1943.

The above-entitled matter came on for oral argument, pursuant to notice, at 10 o'clock a. m., before the Commission:

Present: Commissioners Alldredge (Chairman), Aitchison, Porter, Lee, Mahaffie, Miller, Patterson and Johnson.

Appearances: E. Barrett Prettyman, 822 Connecticut Avenue, Washington, D. C., appearing for Capital Transit Company. Col. Mastin G. White, Capt. Paul S. Davis, Judge Advocate General's Office, Room 3626, Munitions Buildings, Washington, D. C., appearing for Secretary of War. Lt. Everett A. Mathews, U. S. N. R., 2206 Navy Building, Washington, D. C., appearing for Navy Department. Robert E. Quirk, Investment Building, Washington, D. C., appearing for Alexandria, Barcroft & Washington Transit Co. Wilmer A. Hill, 238-241 Transportation Bldg., Washington, appearing for Arlington & Fairfax Motor Transportation Co.

Chmn. ALLDREDGE. The Commission will hear argument in No. 28991, passenger fares between the District of Columbia and nearby Virginia.

Col. White.

Argument of Col. Mastin G. White

Col. WHITE. If the Commission please, my somewhat tardy participation in this proceeding is due to the fact that Col. Albert M. Barron, who with Capt. Davis represented the Secretary of War at the hearing, was recently transferred from the Office of the Judge Advocate General to an assignment in the Army Air Forces, and is not available for this argument.

My principal task in the discussion this morning is to provide a brief introduction for the argument which will be made subsequently by counsel, who are more familiar with the issues in this proceeding and with the record than I am.

This is a proceeding which was instituted by the Commission on its own motion, but at the instigation of the Secretary of War for the purpose of investigating the reasonableness and the lawfulness or otherwise of rates charged for the interstate transportation of passengers between all points in the District of Columbia on the one hand, and four installations of the Federal Government located on the south side of the Potomac River, on the other hand.

1268 These installations are the Pentagon Building, The Army Air Forces Annex at Graveley Point, the Navy Arlington Annex, and the Washington Airport.

The Pentagon Building and the Army Air Forces Annex are used by the War Department for office space in carrying on departmental work at the seat of government. About 31,000 persons work at the Pentagon Building and approximately 3,370 persons, military and civilian, work at the Army Air Forces Annex.

The exact number of people working at the Navy Arlington Annex does not appear in the record, but there are indications to the effect that several thousand civilian employees and members of the Navy work at the Navy Arlington Annex.

The Washington Airport is used to some extent for departmental employees of the Department of Commerce who carry on their work at that particular installation.

These four installation are all located, as I said a moment ago, on the south side of the Potomac River, and they are all located in Arlington County, Virginia, except to the extent that a portion of the Pentagon Building, and part of the airport area may be

located in the District of Columbia. At any rate, the busses of the respondents, in carrying passengers from the District of Columbia to these installations, and from the installations to the city of Washington, cross the line which divides the District of Columbia from Arlington County, Virgina, wherever that line
1269 may be.

So that we have here a case of interstate transportation even though it might be that a portion of the Pentagon Building, for example, is actually in the District of Columbia. The exact location of the line is not a crucial point in this case for the reason that we do have interstate transportation notwithstanding the exact location of the dividing line between the District of Columbia and Virginia.

Commr. AITCHISON. Is that suggestion confronted in the record?

Col. WHITE. No, sir; it is admitted by all parties that the busses do cross the county line between the District and Virginia in carrying on the operations which are involved in this proceeding. The four buildings are utilized for departmental work at the seat of government, and they were set up for that purpose—at least the Pentagon Building and the Navy Arlington Annex, and the Army Air Forces Annex at Graveley Point were set up because of the great expansion in the War Department, and in the Navy Department, brought about by the defense program, which antedated Pearl Harbor, and by the activities of the two departments which came after Pearl Harbor.

The record shows that the War and Navy Departments were unable to obtain sufficient office space for their greatly ex-
1270 panded personnel in the District of Columbia, and consequently transferred substantial parts of their activities to those new installations on the south side of the Potomac River.

It might be of some interest to the Commission to indicate, briefly, the relationship in distance of these installations from the portion of the City of Washington which is generally regarded at the center of the downtown district, namely 12th and F Streets Northwest. The record shows the Pentagon Building is about 3.7 miles from the center of the business district of Washington, and the Navy Arlington Annex is 4.9 miles from that point, and the Army Air Forces Annex at Graveley Point and the Washington Airport are about 4 miles from the center of the business district.

In that connection I should like to call the attention of the Commission to the fact that the War Department's brief contains an error with respect to the distance from the center of the business district of Washington to the Army Air Forces Annex and the Washington Airport. That error is found on page 3 of the War

Department's brief, in the first paragraph, and in the fifth line of that paragraph.

Commr. MAHAFFIE. Can you designate the point you use as the center?

Col. WHITE. 12th and F Streets Northwest, Washington, D. C.

The figure 7.2 miles is used in the fifth line of the
1271 first paragraph on page 3, and that figure ~~should be~~ 4.0 miles.

Now, the respondents in the proceeding are four in number. They are the Capital Transit Company, the Alexandria, Barcroft and Washington Transit Company, the Arlington and Fairfax Motor Transportation Company, and the Washington, Virginia and Maryland Coach Company.

In addition to carrying on extensive operations elsewhere, these four respondents provide bus service to some or all, as we shall see presently, of these installations from termini located in the District of Columbia.

The Capital Transit Company, for example, in connection with its operations, runs a bus service from 7th and Constitution Avenue Northwest, in Washington, to the Pentagon Building, and from 19th and C Streets Northwest, to the Pentagon.

The first operation is over the Highway Bridge, and the second operation is over the Memorial Bridge.

The Alexandria, Barcroft and Washington Transit Company operates bus service from its terminus at 12th and Pennsylvania Avenue Northwest, to all four of the installations that are involved in this proceeding. It is the only company which operates to all four installations.

The Arlington and Fairfax Motor Transportation Company operates from 12th and Pennsylvania Avenue Northwest, to the Pentagon Building and to the Navy Arlington Annex.

1272 The Washington, Virginia and Maryland Coach Company operates from 11th and E Streets Northwest, to the Pentagon Building only.

The record indicates that between 14,000 and 15,000 of the employees at the Pentagon Building, that is the persons who work at the Pentagon Building, including military personnel, use the busses of these four respondents in traveling from the District of Columbia to the Pentagon Building at the beginning of the work day, and use the busses of the respondents again in the evening in traveling from the Pentagon Building back to the District of Columbia at the close of the work day.

There are no approximate figures in the record with respect to the number of persons who work at the other three installations, and who use the busses of the respondents in making the trip back

to the District of Columbia, or rather between the installations and the District of Columbia.

However, the employees are departmental employees at all four installations, and it is reasonable to assume that substantial numbers of these persons make use of the bus facilities of the respondents in order to travel between the District of Columbia and the installations in the morning and again in the evening.

Now, with respect to these thousands of employees who do rely upon the bus services of the four respondents in
1273 traveling from the District of Columbia to the various installations, it is necessary, first, that they get from their homes in the District of Columbia to the points from which the busses set out for the four instaliations.

A few of them, perhaps, live within walking distance of these four termini which I previously mentioned, but since these termini are located in the downtown business area, as you have seen, rather than in the residential districts, it is obvious that thousands of people must first utilize public transportation facilities in the District of Columbia in order to reach the points from which the busses start out in the morning from the District of Columbia to the four installations involved in this proceeding.

Now, in order to make this trip, they must use either the busses or the streetcars of the Capital Transit Company. For this antecedent transportation they pay either a cash fare of 10 cents, or a token fare—the token selling at the rate of 3 for 25 cents, or 8⅓ cents each—or they must present a weekly pass, which sells for $1.25 and is good for an unlimited number of rides.

Now, having then made this preliminary trip to the point from which the busses leave in order to go to the Virginia installations, let us see what the charges from that point to the various installations will be.

We will take up each of the respondents in that connection.

1274 The Capital Transit Company, as previously stated, operates busses to the Pentagon Building from 19th and C Streets northwest, and from 7th and Constitution Avenue Northwest.

For the trip beginning at 19th and C, a fare of 5 cents is charged; for the trip beginning at 7th and Constitution Avenue, a District cash or token fare is required, plus 5 cents, unless the passenger presents a weekly pass issued by the Capital Transit Company, or presents a transfer indicating that he has reached this starting point by making use of the facilities of the Capital Transit Company, in which case, if he has the pass or the transfer, he is carried to Virginia from 7th and Constitution Avenue for 5 cents.

The Washington, Virginia and Maryland Coach Company operates from 11th and E Streets to the Pentagon Building, and for this trip a fare of 10 cents is charged.

The Arlington and Fairfax Motor Transportation Company operates from 12th and Pennsylvania Avenue Northwest, to the Pentagon Building and the Navy Arlington Annex and charges a fare of 10 cents for either destination.

The Alexandria Barcroft and Washington Transit Company operates from 12th and Pennsylvania Avenue to all four installations, and charges a fare of 10 cents to any of the four installations, except that it will sell a book of tickets good for
1275 26 rides between the District of Columbia and the Army Air Forces Annex at Gravelely Point for $1.25, making the individual trip in that case cost 7½ cents.

Now, it is the contention of the War Department that the overall transportation charge made against these employees between their homes in the District of Columbia and the various installations involved here are unreasonable and discriminatory. The argument supporting that contention will be made by Capt. Davis very shortly.

However, before that point is reached, we are confronted in this particular proceeding by an objection that was raised at the hearing by the Virginia Corporation Commission to the jurisdiction of the Interstate Commerce Commission with respect to this proceeding insofar as it involves the Alexandria Barcroft and Washington Transit Company, the Arlington and Fairfax Motor Transportation Company, and the Washington, Virginia and Maryland Coach Company. These three companies are commonly called the Virginia companies since, in addition to the operations involved in this proceeding, they engage extensively in the intrastate transportation of passengers in the State of Virginia.

The obection to the jurisdiction of this Commission as raised by the Virginia Corporation Commission was supported at the hearing by the Arlington and Fairfax Motor Transportation Company.

The Alexandria Barcroft and Washington Transit Com-
1276 pany and the Washington Virginia and Maryland Coach Company did not interpose any objection to the jurisdiction of the Commission, and neither did the Capital Transit Company.

The point with respect to jurisdiction is based upon that part of Subdivision (8) of Subsection b of Section 203 of the Interstate Commerce Act, which with certain exceptions which are not involved in this proceeding and with certain qualifications

which will be mentioned presently, exempts from the regulation of this Commission the interstate transportation of passengers and property in interstate or foreign commerce, wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities.

Now, it is clear in this proceeding that the operations here are in the City of Washington and in an area or zone that is adjacent to and commercially a part of the City of Washington. So that if that portion of the exemption stood alone there would doubtless be good ground for the argument made by the Virginia Corporation Commission, and by the Arlington and Fairfax Motor Transportation Company.

Yet, the crux of the case is found in a proviso which follows the statutory language concerning the exemption, and which states that a motor carrier in order to be eligible for this exemption must be engaged over its entire interstate route or
1277 routes in the intrastate transportion of passengers under the laws of each state of jurisdiction.

Now, let us briefly investigate the facts here with respect to these respondents.

The Capital Transit Company, which does not raise the objection here at all, has no intrastate rights whatever in Virginia, although it is engaged extensively in intrastate transportation of passengers in the District of Columbia.

The Washington, Virginia and Maryland Coach Company is engaged extensively in the intrastate transportation of passengers in Virginia, but has no intrastate rights in the District of Columbia.

So it is clear that the exemption does not apply to either of these companies, and neither of them claims exemption, as I have previously stated.

Now, what is the situation with respect to the other two respondents? The Alexandria Barcroft and Washington Transit Company, which by the way concedes the jurisdiction of the Commission, has extensive and complete intrastate rights in Virginia and it has certain intrastate rights in the District of Columbia. As I previously indicated, in this operation the A. B. & W. Company operates over two routes between its terminus at 12th and Pennsylvania Avenue, and the various installations.

One route goes over the Highway Bridge; one route goes over the Memorial Bridge.

1278 Now, with respect to the route which passes over the highway bridge the A. B. & W is permitted on trips into Washington to pick up passengers south of Maine Avenue, and discharge them north of Maine Avenue. In trips from Washing-

ton to Virginia over this route, it is permitted to pick up passengers north of Main Avenue and discharge them south of Maine Avenue.

It does not have any intrastate rights at all in the District of Columbia over the route which passes over the Memorial Bridge.

Now, the situation with respect to the Arlington and Fairfax Motor Transportation Company is similar to that of the A. B. & W. Co. It operates over two routes from its terminus at 12th and Pennsylvania Avenue, Northwest. One route passes over the Highway Bridge, and one over the Memorial Bridge.

Now, with respect to the route over the Highway Bridge, it appears that this company can pick up passengers at three stops south of Maine Avenue, and can discharge those people north of Maine Avenue, and it appears also that they can pick up passengers north of Maine Avenue and discharge them at these three stops south of Maine Avenue.

The Arlington and Fairfax does not have any intrastate rights as this record shows on the route which goes from its terminus over the Memorial Bridge.

1279 So that we have the two companies which are in substantially the same situation with regard to this, one conceding the jurisdiction of this Commission, one objecting to the jurisdiction of this Commission. In both cases they have certain restricted rights over one of their routes, and no intrastate rights whatever over the other route, so that, if you look merely at the language of the exemption and the proviso which follows it, it is clear that neither company really is entitled to the exemption in this case, because the statutory language, verbatim, is as follows, the statutory language of the proviso:

"Provided that the motor carrier engaged in such transportation of passengers over regular or irregular routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction."

So that neither of these companies, then, is engaged in the intrastate transportation of passengers in the District of Columbia over its entire route or routes involved in this proceeding.

However, even if you were to concede that the companies were engaged in intrastate transportation over, say, the 14th Street route, you would have the fact that they are not engaged in intrastate transportation at all, in the District of Columbia, over the Memorial Bridge route.

1280 Furthermore, even if they were engaged in intrastate transportation over both routes, and over the entire lengths of both routes, this Commission—it might be mentioned merely in passing—would have the authority to rescind the exemption if

it should find that the public interest and commerce required the lifting of the exemption, and you would have an ideal case for that here, since there are four respondents involving the same type of transportation, two of the subject to regulation by this Commission because they have no intrastate rights whatever over the entire length of their respective routes, while the other two, under this hypothetical situation, would be entitled to the exemption and consequently you would have a case where the public interest would require the Commission to exercise its jurisdiction over all four in order to prevent harm to the public interest.

Capt. Davis will take up at this point, and will present the arguments of the War Department with respect to the unreasonableness of the rates and their discriminatory character as applied to employees who live in the District of Columbia and work on the south side of the Potomac at the four installations that are involved in this proceeding.

Chmn. ALLDREDGE. Capt. Davis.

Argument of Capt. Paul S. Davis

Capt. DAVIS. If the Commission please, I think that it may be helpful to direct attention to the location of these installations on the map.

1281 This is a map of the District of Columbia and vicinity, and the Pentagon Building is this little red building just south of the river, south and east.

The Air Forces Annex is located on Graveley Point at this little white spot, directly south of the main portion of the city. The Air Forces Annex is located directly west of the Pentagon Building, and the municipal or National Airport covers the area on Graveley Point just south and east of the Air Forces Annex.

Now, it is the position of the War and Navy Departments that these installations are in effect part of the seat of government and the business community of the City of Washington, and it is our position that these installations should be served for the District fare, just as are all other parts of the City of Washington.

Col. White mentioned the fact that there is some doubt as to where the actual boundary line of the District of Columbia is. That has been a matter of some controversy and there is some evidence in this record on it. We do not consider it necessary to ask the Commission to determine that question, and the War Department is not taking any definite position as to where that is, but we believe it appropriate to call the Commission's attention to the fact that the boundary very likely runs near or through the Pentagon Building and very close to

1282 the Air Forces Annex and the Municipal Airport, so that

in any event with the boundary along that line, which is believed by many experts to be the 1791 high water mark, or with the boundaries farther east and closer to the river, these installations are just over the boundary line a relatively short distance so that the amount of travel outside of the District of Columbia to these points is relatively small.

Now, as Col. White said, the Capital Transit Company serves throughout the District for a 10 cent cash fare or 8⅓ cents token fare or weekly pass, which may be a little less than 8 cents per ride depending on how many rides you used, and the passenger may ride as much as 15 miles or so for a single fare on the north side of the river.

There are in the record figures showing comparisons from different parts of the city to these installations as compared with other people who work in the city. I might mention a couple of those figures.

For example, from Chevy Chase Circle it is 8.6 miles to the Pentagon, and about half a mile farther, 9 miles, to the Navy Annex, and about a mile and a half to 2 miles farther to Graveley Point, 11.3 miles.

Now, from that same point it is about 9.2 miles to these temporary buildings of the War Department down near the War College, and it is 9.8 miles to the National Guard Armory and other temporary buildings on East Capital Street, and it is 13.4 miles down to Bolling Field.

1283 All these latter points are served for the District fare, whereas these shorter distances to the other side of the river charge an additional fare.

We believe that that fact that these are part of the seat of government, these buildings, and the fact that they are very close to the District line in any event, and the fact that they are less distant from many residential points than are various other installations, leads to the conclusion that they should be treated as part of the business community of the city and served for the District fare, and we therefore consider that the present rates of fare under which an additional fare is charged are discrimmatory in violation of the standards of the Interstate Commerce Act.

Commr. ROGERS. Is that question involved with the exception of Capital Transit?

Capt. DAVIS. Yes, sir; we believe it applies as well to the other companies, and we take the position that the service should be rendered for the District fare by whatever companies are concerned.

Chmn. ALLDREDGE. Well, has the A. B. & W. a district fare?

Capt. DAVIS. No; they charge a 10-cent fare from these installations concerned into the center of Washington, but we take the position that for this short portion of the travel in Vir-
1284 ginia into any part of the District the service should be rendered for the District fare of 8⅓ cents or on the District pass, and that these three Virginia respondents should institute joint fare arrangements with the Capital Transit Company.

Commr. AITCHISON. Now, you are only talking about the bus service that they perform.

Capt. DAVIS. Yes, sir; primarily, although so far as the streetcar service is concerned, it may well be that the Commission can institute joint fares on that as part of or as incident to the institution of joint fares on the busses, because of the fact that these bus services are very much intermingled with the streetcar services.

Commr. AITCHISON. Well, would that be under the preference and discrimination section?

Capt. DAVIS. I assume, sir, it would be as part of the Commission's general power to remove discriminatory rates and establish fair and reasonable rates.

Commr. AITCHISON. We would not have any power to prescribe fares over the streetcar system by itself any more than we have the power to prescribe the price of a box of candy.

Capt. DAVIS. No; I assume that if——

Commr. AITCHISON. The point is if we could prescribe that it would be like prescribing that the Capital Transit Company should give the blonds a box of candy and deny it to the bru-
nettes in the bus system, interstate. We might require a
1285 qualitative treatment.

Capt. DAVIS. Insofar as the streetcar service is a part of the bus service, and as I understand the District law, there are free transfers between them, I think that the Commission might properly adjust the fares on the streetcar services incident to whatever action is taken in connection with the bus fares.

I am not sure whether it is necessary for the Commission to do that in this proceeding, because as we review the matter—at least as far as the War Department is concerned—if the Commission enters a joint fare order with reference to the bus service, then by operation of the law already in force within the District, and as applied by the District Public Utilities Commission, the transfers will automatically become effective as to the streetcars.

However, I am not sure that the Commission does not have power to do it for that reason, that they are so closely connected.

Commr. JOHNSON. Could it not be considered as a continuous city development with only the District line separation, without any river, but with only the District line?

Capt. DAVIS. We are not concerned with this in this proceeding——

Commr. JOHNSON. I understand you are not, but you used an example from Chevy Chase down to Boiling Field, and
1286 that would mean being able to ride for 10 cents down to the Potomac River, and then paying a nickel to ride to a point outside the District line, but close to it.

But now let us put that in another way. He travels from four blocks south of Chevy Chase Circle to Chevy Chase Circle, and he wants to go out into Maryland. Does he pay an extra fare?

Capt. DAVIS. Yes, he does, sir, but we believe that is a different kind of a situation from that here involved.

Commr. JOHNSON. If that is different, I want it explained.

Capt. DAVIS. The area in Maryland is primarily suburban territory, and from the standpoint of the passenger, if he lives out there, that is primarily because of his own choice, and if he is working at the Pentagon, it is because he is a government employee and has to work at that particular point, so he has no choice about it from his standpoint.

Now, from the standpoint of the bus operations, operations out here are in relatively sparse territory, and it is residential. The busses gradually thin out so far as their traffic is concerned as they go farther out, whereas here it is concentrated business transportation.

Commr. JOHNSON. Well, there are some people who work out there. I am talking about people who live in the District and who go out north of the District to work. They pay a
1287 dime to travel four or five blocks in the District, and pay a nickel to go outside of the District, which is exactly what happens down here. They are going out of the District to work and they have got to come back to the District to live.

Capt. DAVIS. In that kind of a situation, sir, to the extent that there has been an extension of the business community adjacent to the District, it may be that the same principle would apply. I thought you had in mind, sir, the residential traffic out there which I think stands on an entirely different basis.

Commr. JOHNSON. No, the point I am trying to have you differentiate is if they cross the District line there, they pay a nickel no matter how long or how short a distance they have ridden, and in going to the Pentagon Building they do the same thing. Now, I want to know the difference.

Capt. DAVIS. Well, sir, I think it is necessary to look at what the primary character of the traffic is. The traffic over here at the Pentagon is primarily downtown business, concentrated traffic, traffic to an installation as part of the seat of government.

The traffic out here in Maryland, as I understand, is primarily residential in character, although of course there may be some people who are going to work out there.

If, however, one of the major installations of the govern-
1288 ment was located there so that there was a heavy transportation of people going to and from work across that line, I believe the same principle should apply as applies here.

Commr. LEE. The Naval Hospital is out there.

Commr. PATTERSON. What would you say with respect to the installation at Bethesda?

Capt. DAVIS. Of course that is not before the Commission at this proceeding, and it may be the same principle should apply, and the District fare should be extended to that point as to the people going to work there, although personally I do not think it is quite such a strong case as this one because that hospital is not quite so much a part of the seat of government, and is not so close to the center of the city as the Pentagon Building.

I agree it may be a question of degree as to what kind of an installation you would draw the line at.

Commr. AITCHISON. Can you indicate the Navy Hospital on the map?

Capt. DAVIS. Yes, sir. I believe it is somewhere right around here. It is considerably more distant from the District than is the Pentagon Building or the Air Forces Annex.

Commr. JOHNSON. Would you consider the density of traffic as one differentiation?

Capt. DAVIS. One consideration.

1289 Commr. JOHNSON. What is the other?

Capt. DAVIS. The type of business conducted and how it is served, its connection with other operations of the government, its relative proximity to the center of the business district, and I would say those are the main factors.

Commr. JOHNSON. If the Pentagon Building was where the Navy Hospital is, would you take the same position that you are now taking?

Capt. DAVIS. Well, it is hard to say, sir. Of course I think there would be considerable basis for it, although I do not think it would be quite as clear a case for the reason it is a good deal farther out and not so close to the center of the city.

Commr. JOHNSON. Well, suppose the Pentagon Building was farther; would you still take that position?

Capt. DAVIS. If it was somewhat farther, yes, sir.

Commr. JOHNSON. Then you would take the same position if it were where the Navy Hospital is?

Capt. DAVIS. I believe I would, sir, although I admit as you go farther out, there is more doubt as to whether it should be applied.

and I might mention also in that connection that the average distance which the passenger travels to the Pentagon Building and the Air Forces and Navy Annexes is 6.2 miles. That is totally within the District, and the testimony in the record shows
1290 that is, the District fare is a reasonable fare for that service.

Now, of course, from this Naval Medical Center presumably the average passenger within the District would live somewhat further away and that would be one factor that the Commission might consider.

Commr. JOHNSON. Would the group of residents out in Chevy Chase, acting together, being a great number of people coming into Washington to transact business, and going out at night, and vice versa, those who work out there going in, a great number of people, would they not have just call to present the argument you do if they wanted to discontinue the payment of an additional nickel to get home or to get to work?

Capt. DAVIS. We do not feel it is entirely comparable because those people are going from their residences, and they have a choice as to where they live and as they get out there, the character of the traffic is different and the density of traffic is less.

Commr. JOHNSON. Well, then, density of traffic is your main consideration.

Capt. DAVIS. I would not say it is the main one, sir; I would say it is an important consideration.

Lt. Mathews will discuss the evidence as regards the cost of the service and as I have indicated, we believe the cost of
1291 this service to the Pentagon is no greater than many other services rendered within the District.

Now, I would like to spend a moment briefly on the question of joint fares, because several of the respondents have questioned the authority of the Commission to establish joint fares.

Chmn. ALLDREDGE. This indicates you have got five minutes to the end of your reserve time, Capt. Davis. You can go on over your reservation.

Capt. DAVIS. We believe the statute is clear on this. It does provide that the Commission may establish joint fares, between any common carriers by motor vehicle.

Now, we consider that the whole travel from home to business, at these installation, is interstate traffic, and that you cannot accept it in two portions, but that when the passenger gets on his bus near his home, going to the Pentagon, he is engaged in interstate travel, and therefore is entitled to a joint fare.

I believe our brief states our contentions more fully and I won't take up more time at this time.

Chmn. ALLDREDGE. Lt. Mathews.

Argument of Lt. Everett A. Mathews

Lt. MATHEWS. If the Commission please, I just want to make briefly three points.

Chmn. ALLDREDGE. Do you want to reserve any time? You have 45 minutes.

1292 Lt. MATHEWS. I want to save the balance of the time for reply, but I do not intend to take much time for my opening comments.

The first of these points is that the service given here, the distance traveled, and the cost, are not such as would justify any fare in excess of the District fare.

The distance, to these buildings, I think I will refer to them collectively as the Annex Building to save a lot of time trying to repeat them individually, the distance to the Annex Buildings from points within the District are substantially the same as the distances to comparable places of employment within the District which may be reached for the District fare.

Commr. JOHNSON. Lt. Mathews, isn't that true in crossing the District line at any other place?

Lt. MATHEWS. That is not true at any other place, because there would be certain lines beyond which it definitely would not be true. We have in this case an exhibit, No. 12, which sets forth the distances from selected points within the District.

Commr. JOHNSON. I heard those recited.

Lt. MATHEWS. This is something different than has been covered, and these points—the distance from these points as shown to these buildings within the District, in which the Army
1293 and Navy have their installations, and the distance from the same point to these Annex Buildings is likewise shown.

Now, the average distance between the District and these points is 6.7 miles, and the average distance from the same points to the Pentagon Building is 7.1 miles, and the distance to all of the buildings collectively on the average is 7.7 miles.

Now, that is slightly greater in the case of the over-all average. It is a mile more if you are going to these Annex Buildings than if you are going to points within the District.

Commr. JOHNSON. Can't you get the same averages, same fare zone, to any points north or east of the District of Columbia, if you got them there as to the Pentagon and as to Graveley Point, and your other buildings?

Lt. MATHEWS. That would not be true in all directions and it would not be true in all distances. It would have to be in the same direction as your general travel, and it would have to be not beyond certain limits.

In any event, from the District, because if you get more than a mile or two or maybe three beyonm the District in any given direction, your distances are going to be greater.

Commr. JOHNSON. The fact remains that you pay a dime in the District, and when you cross the District line you pay an extra fare going northwest and northeast from the District of Columbia.

1294 Lt. MATHEWS. That is right.

Commr. JOHNSON. You want to obliterate the 5-cent fare the minute you cross the Potomac River.

Lt. MATHEWS. Well, the only reason for that, sir, is that this is substantially the same travel you have within the District. These are people living within the District and going to points of mass employment. Here 40,000 people——

Commr. JOHNSON. Well, then, you are making the volume of traffic the manner in which you differentiate from crossing the District line anywhere else.

Lt. MATHEWS. That is certainly the major one.

Commr. JOHNSON. What is your other one?

Lt. MATHEWS. The distance involved, the fact that this is really part of the business community of Washington. These buildings house the same people who worked right in the District in the buildings that were moved there. This is just an extension. The Pentagon Building is divided between the Pentagon and the Army Air Forces. The Navy between the Navy Building and the Navy Annex, and until they were extended, they were all employed in the District as far as any of them are concerned. They think they are getting the same travel as before except they are paying more for it. They are going from their home to their place of work and the downtown center of government buildings. The fact that the river is there is only an incident and the fact that the

1295 District line is there is only an incident.

Commr. JOHNSON. Doesn't any individual living in the District have the same complaint crossing the northwest or northeast line of the District of Columbia, an individual going out to work and coming back at night, as any individual going to the Pentagon Building?

Lt. MATHEWS. I cannot tell you what complaint he would have.

Commr. JOHNSON. He pays a nickel to go outside the District line although he lives only four blocks from the District line.

Lt. MATHEWS. In that case he would walk to work, but the principle is true.

Commr. JOHNSON. Why, sure.

Lt. MATHEWS. In any case you would have to have in any fare that goes beyond certain points that is not based on a mileage basis concededly——

Chmn. ALLDREDGE. You mean a blanket fare has to have a limit.

Lt. MATHEWS. Yes.

Commr. PATTERSON. Isn't that same situation true with respect to your employees that live in Maryland across the District line and working in Washington?

Lt. MATHEWS. I think that is true, and I think it has been
1296 shown that this is not just suburban traffic where you could come to the end of your community and if you are going any further, you pay more fare.

Now, those things just have to be done to get a limit to it. You can't go indefinitely for a blanket fare. However, we have here a situation where these buildings are nothing but an expansion of what the District has always been.

If it were any site besides Washington, very probably the city limits would have been extended, and those would not be within the District, and the boundary would not be there, but it is not so easy to change the District line. As you all know, most cities, when an installation of this size with 40,000 people and all the incidentals, the facilities to feed them, the line would be extended, and you would not have this question of a District line.

Commr. ROGERS. It is somewhat a comparable problem within the District, is it not? Take the streetcar I come down on. Probably a lot of the people who ride it get twice the transportation that I do for the same dime because they live farther out.

Lt. MATHEWS. That is why I averaged these things to show that it is not an unreasonable thing we are talking about, that on the average while it is slightly greater, it is very minor, just a few percent on the average, and as long as you are going to have a
1297 blanket fare, certainly you are going to have, some people are going to get more rides for their money than others. You cannot avoid that. And this is a particular traffic that is of a nature that should be blanketed within your community.

Now, I don't think anybody will contest the proposition that normally within a community, all of your principal parts of your community are under one fare basis, that that is one of the fundamental principles of fare fixing in communities. The community has a certain fare, and except as you get to the suburban communities, you do not have any zone except a blanket fare to average out the distances. Some ride a long way and some a short way, but they all pay the same fare.

Now, as far as the service is concerned, I think that it can not be reasonably argued that there is any great difference in the service. It has been suggested that there are differences. That the people going to the Pentagon for example on Capital Transit busses get a nonstop rush-hour service. No such suggestion was made to any of the other traffic involved here, and to take a look at this

Capital Transit service which is said to be so different and special, we find that it is no different from the service given the District.

Now, the people traveling to work in downtown Washington travel in the morning to work, and in the evening away from it.

1298 That means that there is a great rush, and you have the rush hour traffic, and the busses, many of them travel express on this rush hour traffic for long distances without stops. That is not greatly different from what happens on the Pentagon run, and any suggestions that there are great differences really amount to no more than that, that here we have one rush hour service which goes three and a half miles nonstop. Nobody attempted to compute just what the distances nonstop on these other routes are, but I venture that they are probably much the same.

Commr. AITCHISON. Lieutenant, I do not think anybody has told us just what service is given throughout the day with respect to these points.

Lt. MATHEWS. On these lines, the Capital Transit gives service only during the morning and afternoon rush hours.

At the hearing the question was asked why that was so, and Mr. Merrill, president of the company, said that it had been determined that adequate service during the balance of the day was given by the Virginia companies, and for that reason the Capital Transit had not attempted and did not plan to operate during non-rush hours.

The other companies of course have most of their traffic during the rush hours because that is when the people travel back and forth, but they also give service during the middle part of the day.

1299 Commr. AITCHISON. Is there any night service?

Lt. MATHEWS. There is some night service. I am not familiar with just what company gives it.

Commr. AITCHISON. The record does not go into that?

Lt. MATHEWS. I don't believe it goes into it. Mr. Quirk is familiar with that.

Mr. QUIRK. I think it does. The record contains all the services.

Lt. MATHEWS. There is some night service and I believe and I think it is given principally by Mr. Quirk's company, the A. B. & W.

Commr. AITCHISON. Anything to show the relative proportion of travel during the rush hour and during these other hours?

Lt. MATHEWS. I have not made an analysis of it. The exhibits I know do show that. I think that to develop that fact probably a study would have to be made of the exhibits, but I know the facts are there. I did not try to make a study of it myself, but

unquestioned fact is that the great majority of the traffic is during rush hours.

Commr. AITCHISON. Does the record show whether or not the vehicles are crowded during the rush hours?

Lt. MATHEWS. There are statements to that effect, nothing very definite, as to the loading of the busses, except that there are
1300 figures as to the number of persons riding the busses between certain hours, and some other figures as to how many busses give the service during those same hours and by division you can reach the result.

I do not believe the result appears as such in the record.

Chmn. ALLDREDGE. May I ask you now the extent of the service of the Capital Transit Company? Does it go beyond the Pentagon Building?

Lt. MATHEWS. It does not.

Chmn. ALLDREDGE. Its service ends there?

Lt. MATHEWS. That is correct.

Chmn. ALLDREDGE. It is the other three companies that serve these other points?

Lt. MATHEWS. The other companies have always had their primary across the District line business in bringing of people from Virginia to work in the District and taking them home at night. This business is the reverse of that and amounts to counterflow traffic in that busses returning from bringing loads into the District take a load to these Annex Buildings, and at night they bring a load to the Annex Buildings and return with their former ordinary traffic to Virginia.

There is one exception to that, I think, the shuttle of the Arlington and Fairfax meets the terminal of one of the Capital Transit lines just across the District line and shuttles to
1301 that point and that particular line does not cross the District line, but it meets the Capital Transit line which does.

Now, as to the costs of these services, the respondents did not produce any facts showing the costs and that burden had to be sustained by our witnesses in this case. We had preliminarily a determination of the costs by Mr. Dixon, who is an expert employed by the government to study rates and the costs of motor traffic in general.

He analyzed the statements of the Capital Transit Company and their costs of service in general, and the facts as brought out regarding the service to the Pentagon Building, and he concluded that on the basis of all of the available information, the cost of a ride from the Pentagon home was approximately 6.06 cents.

Commr. AITCHISON. What do you mean by home?

Lt. MATHEWS. The average distance traveled by these people is 6.2 miles, and this of course had to be an average figure, because

we do not know where any given individual—well, that is not true either; there were questionnaires which showed the distance traveled by any given individual, but those were all averaged, and the 6.2 miles traveled by the average individual was the result.

The average cost of that 6.2 miles was 7.06 cents. Now, the respondents, as can be readily understood, attempt to question
1302 that figure. In one respect probably the figure is a little low. Mr. Dixon took a speed of 17 miles an hour, which is the running time on the Pentagon route, and there is evidence that the speed, that the overall time is such that the speed is actually a little lower, and to that extent probably an adjustment of about .7 of a cent should be made, which would make it cost 7.8 cents, approximately.

Commr. MUELLER. You do not mean speed now. You mean the overall time.

Lt. MATHEWS. The average miles per hour, which is a division of the time by the miles. The counsel attempted to raise other questions regarding this cost determination——

Chmn. ALLDREDGE. You had another cost witness, too, did you not, Mr. Taylor?

Lt. MATHEWS. Yes; I will come to him in a minute.

Chmn. ALLDREDGE. Oh, pardon me.

Lt. MATHEWS. Mr. Dixon testified that he would not use the figure offered by the company as to wages, unless there was no interchange of busses. There has been an argument made that since Mr. Dixon would use the actual wages which were given, his figure is not correct. However, he did not so testify. He testified that he would not use that figure unless there was no interchange of buses. In fact the company does not know to what extent the busses used on the Pentagon route are used on the other route.

Obviously they are used rather freely, and the use
1303 can't be restricted to that, and the wage figure is not sufficiently reliable on the basis of allocation that it can be properly taken.

Chmn. ALLDREDGE. Do I understand then that Dixon corrected his cost of figure from 7.06 cents per ride to 7.8 cents?

Lt. MATHEWS. No, he did not, sir. I say I think that is a correction that can well be made.

Chmn. ALLDREDGE. I see.

Lt. MATHEWS. The computation was made by a Capital Transit witness who testified as to the speed and taking that testimony as correct, that adjustment would be in order.

Chmn. ALLDREDGE. I see.

Commr. AITCHISON. Anything for overhead in that figure?

Lt. MATHEWS. Yes, sir.

Commr. AITCHISON. Return?

Lt. MATHEWS. That does not include return.

The Company offered Exhibit 89 to cover this Pentagon cost, or to cover the Pentagon part of the trip, which you will undoubtedly hear a good deal about from the respondents. It is our view of the matter that this exhibit is not reliable because the allocations have been made in an unfair manner. That was covered in our brief, and unless you have some questions about it, I won't go into that further at this time.

1304 The really great objection to this Exhibit 89 is that it is only a partial picture. We have for determination in this proceeding the proper fare from points within the District to these Annex Buildings.

Now, the fact that the Capital Transit chose to take a particular portion of this trip and say the costs are so much does not prove anything unless you have the costs of the rest of the trip. Those were supplied by Mr. Dixon and the total, as I say, would be around 7.8 cents.

Commr. JOHNSON. That cost is to Capital Transit Company for movement from anywhere, average per passenger?

Lt. MATHEWS. That is correct, sir; and I think it can be readily seen, the fact that the cost of part of this trip, of 3½ miles out of 6.2 miles is a certain amount, with allocations heavily loaded on the theory that this is a special operation, and that the allocations have to be made that way to take care of the cost does not give you much help in finding the cost of the whole trip, because it is the whole trip that is under consideration, and it is the whole trip that needs to be determined in this proceeding.

Now, I want to just briefly mention that the Commission is recognizing in its determining of rates heretofore, the public necessity of traffic, the value to the public, and the need for particular traffic, and on that basis this is a case which clearly is

1305 deserving of attention. It is a matter of common knowledge now that manpower is very tight, and morale and turnover are very difficult things to maintain.

The fact is that in the Navy Department the turnover is 33 percent greater across the river than it is on this side.

Now, the respondents in their brief attempted to minimize the effect of these fares upon that. Whether the effect is great or whether it is comparatively minor. I think that there can be no very real question in the light of the people that testified, that the fares were a factor. Some of them said it was a major factor; some said a minor factor, and some did not know.

But in any event it is a factor and certainly there can be very little question that, human nature being what it is, people resent

being discriminated against. A lot of these people now employed across the river formerly were employed in the District.

Commr. ROGERS. What about the time element? How long would it take to get over there and back?

Lt. MATHEWS. Of course that depends on where you start from and the routes you take.

Commr. ROGERS. Take from 12th and the Avenue to the Pentagon. How long would it take?

Lt. MATHEWS. This much I can tell you—I do not know that time—the running time, round trip running time,
1306 including loading and unloading, is 24 minutes for the Capital Transit Company.

Chmn. ALLDREDGE. That is from the shuttle bus.

Lt. MATHEWS. Yes, but they all run that way generally speaking.

Chmn. ALLDREDGE. You were not talking about the passenger from his original point.

Lt. MATHEWS. No; he asked from 12th and Pennsylvania.

Now, the Capital Transit bus goes from 12th and Constitution.

Commr. ROGERS. The point I am driving at is how much longer a person will take in going to and from work when he works at the Pentagon.

Lt. MATHEWS. Well, this is not in the record, but people living in the same place I do, which is right out near the Cathedral. they get to the Pentagon in three or four minutes longer than it takes me to get to the Navy Building.

Commr. ROGERS. Three or four minutes?

Lt. MATHEWS. Yes. Now, of course that is an individual's estimate, and it may not be correct. I do not know. My bus goes right about where the Pentagon bus leaves from, and it goes on about 7 or 8 minutes more, so I suppose that that would be a fairly good estimate.

On the other hand, you might have a situation where people would take a good deal longer to get to these buildings.
1307 As I say, the running time on the Capital Transit busses according to the record is 24 minutes, that including loading and unloading, and the complete trip.

Commr. ROGERS. I see.

Lt. MATHEWS. Now, to go back to this matter of the employee turnover, as I say, it does not matter whether the fact is great or minor. It is definitely a fact, and as long as human nature is what it is, people are going to resent being discriminated against.

A lot of these people formerly worked in the District, and they went to work for a District fare, and now they pay more, and they do not think they are getting any different ride, if they go from home to work and work back home. That is all there is

to it for them. They feel like they have been discriminated against, and as long as they feel that way, there is going to be some effect.

Commr. AITCHISON. They do not care whether the high water mark is on the north side of the Pentagon Building or on the south side.

Lt. MATHEWS. I don't imagine any of them ever thought about it.

Now, the third point on which I spoke a minute ago briefly in answer to a question is that the District fare application to this traffic is in accordance with the practice elsewhere. As I
1308 mention, the fares in urban areas are customarily on a community basis. That is more or less fundamental. There is no other practical way to do it, and these buildings are merely an extension of the principal occupation of the District, that is, the seat of government.

They have been moved across the river. Why, I don't know, but they are there. They are near the rest of the District. It is a point of mass employment. It is the same thing as people going to these buildings in the District. It is mass movement from home to work, and from work to home.

As far as the political boundaries are concerned, it is not unusual at all to extend the urban community far across political boundaries when there is any mass travel of the urban nature to these points across the boundary. There are a number of instances of river. There was some confusion about whether or not it did go across a river. There was some confusion about whether or not it did go across a river at the time of the hearing, and we got out a map and looked at it, and we found that it really did.

One of them which I might refer to is Kansas City, Missouri. There the fare goes not only across the state line, but across a river. There was some confusion about whether or not it did go across a river. There was some confusion about whether or not it did go across a river at the time of the hearing, and we got out a map and looked at it, and we found that it really did.

It might be mentioned too with regard to this District boundary that you have a background here of fare regulation
1309 by the District Commission on the one side and the Virginia Commission on the other.

Obviously neither of them go across the District line. That limitation of course has no bearing upon fares determined by the Interstate Commerce Commission, and past practices in this regard have not merit in in this case and need not be considered unless there is some other reason to consider the District line, and I submit there is none.

When we filed our opening brief, we filed with it a copy of the Illinois Corporation Commission regarding the fares in Chicago,

and I might mention that briefly, and in that decision the Commission ordered universal transfer between the surface lines, bus lines, elevated lines and subways, for a far not to exceed 10 cents. That order was based on partial transfer between the bus lines and the surface lines—pardon me—between the bus lines and the rapid transit, and between the surface lines and the rapid transit for eight years.

The Commission found that, as a result of the institution of the experimental transfer, that all parties, including the carriers, had benefited. The traffic had increased. The use of the transportation facilities was much more general and it was found to benefit the public very substantially.

Another thing that might be mentioned of particular interest in that decision was the fact that the Commission
1310 found that none of the objections to these intercompany transfers were substantiated in fact. There have been some questions raised by the respondents in this case as to the desirability or feasibility of intercompany transfer and joint fare arrangements. The Illinois Commission found that on the basis of eight years of operation there just was not any basis for the objections, that while the objections had been made, they were not well-founded, and the Commission found that there was no reasonable objection to instituting the joint fare and universal transfer arrangement.

If the Commission please, I will reserve the remainder of my time.

Chmn. ALLDREDGE. Well, now, you finally did not mention Witness Taylor's cost testimony. Did you put him on the stand?

Lt. MATHEWS. He was put on by the Army and Navy, primarily by the War Department.

Chmn. ALLDREDGE. You had two witnesses.

Lt. MATTHEWS. I meant to mention Taylor. It just slipped my mind.

Chmn. ALLDREDGE. I observe here that his estimate of cost, I presume between the Pentagon and the Army Air Forces Annex, and the District was 7.6 cents for the average trip of 6.2 miles, is that correct.

LT. MATHEWS. That, sir, I don't recall the exact figures.
1311 Chmn. ALLDREDGE. It is in the brief?

Lt. MATHEWS. I think that is true because his basis of calculation was 1¼ cents a mile as a reasonable cost for this kind of transportation, based upon nationwide experience. He had not investigated the cost statements of the companies or their cost, but what he did was to take the loadings of he busses, and the probable revenue and determined that 1¼ cents a mile would

probably pay for this transportation, and that would be, I think, 7.6 cents.

The basis for that, as I say, is with experience, and his having traveled throughout the county for the War Department, and having instituted transportation for War Department personnel—either employees or military personnel—from one point to another, and he mentioned that he was conducting transportation from West Philadelphia to the shipyard at 1¼ cents and making substantial profit.

Chmn. ALLDREDGE. Did the respondents undertake to rebut this cost evidence?

Lt. MATHEWS. The only cost evidence produced by the respondents of which I am aware is this Exhibit 89 which I mentioned. Now, Exhibit 89 is, I think, not very valuable in this case. It tells only a partial story, and in addition it has allocations to which I cannot subscribe.

Well, dwelling upon, exhibits, I might mention another exhibit which will probably be heavily relied upon by
1312 respondents—they did in their briefs—and that is Exhibit 60.

Now, Exhibit 60 purports to be a compilation of suburban zone fares. Now, this Exhibit 60, in the first place, is worthless as evidence. No foundation was laid for it, as to who prepared it, how the selection was made, what companies were left out and why they were left out, what companies were included and why they were included.

Mr. Merrill, the president of the Capital Transit Company, here introduced this exhibit and said that he did not know. Nothing in the record shows that anybody else knows. The only thing the record shows is a highly selective list and the companies with low fares and large zones are omitted and companies with high fares and small zones are included; and I just mention that it is not very worthy of very extended consideration.

Thank you.

Chmn. ALLDREDGE. Mr. Prettyman?

Argument of E. Barrett Prettyman

Mr. PRETTYMAN. If the Commission please, I represent the Capital Transit Company, and approach the case from the standpoint of that company.

The facts have been stated, but I should like to adjust a few to those that have been stated by counsel for the War and Navy Departments.

1313 The Capital Transit Company operates a general street-car and bus service within the District of Columbia, and

has lines running across the District line in various directions to Maryland.

It operates two routes to the Pentagon Building, one route known as R–2 and beginning at 19th and C Streets, Northwest, goes across the Memorial Bridge, thence down to the Pentagon. The other route begins at 7th and Constitution Avenue, comes up across the Highway Bridge, and thence to the Pentagon.

By Route R–2, the distance from the terminal to the Pentagon is 3.5 miles. By Route Q–2, 7th and Constitution Avenue, the distance is 3.6 miles, so that approximately we can say the distance from the terminal to the Pentagon Building is 3.5 miles on each route.

We operate a rush hour service only, morning rush and evening rush. It is a nonstop express service. We do not operate otherwise in Virginia.

There is no return traffic on this operation except, of course, in the morning, when the bulk of the employees are coming to work, there are a few custodial employees going home. Our busses come over and either go back empty or except for one or two passengers, or they stay at the Pentagon all day.

Commr. AITCHISON. Does the record show that when they go over there a little bit more than loaded or not?

1314 Mr. PRETTYMAN. I can't recall the places in the record, but I think the record would pretty well support that they are pretty well crowded, yes sir; that they carry a pretty good load.

Commr. AITCHISON. What would be the average, both ways?

Mr. PRETTYMAN. The number of passengers per bus?

Commr. AITCHISON. What would be your load both ways?

Mr. PRETTYMAN. 65 passengers. I don't recall the figure from the record, but I will ask them to look it up and tell me later on.

Commr. ROGERS. I was going to ask, how long have you been performing this service?

Mr. PRETTYMAN. Why, I think it was May 1942, sir. The history of the operation I could give you briefly.

Commr. ROGERS. How did you arrive at the flares you were going to charge to start with?

Mr. PRETTYMAN. Well, when the Pentagon site was being discussed, that is where they were going to put this big building, the bus companies were called into consultation and they roughly estimated at that time and so advised the War Department people that if the Pentagon Building was put where it now is, there would be an additional fare of 5 cents.

Now, they did that on the basis of estimated costs, a little bit later they figured that there would be necessarily a higher

rate. I think they talked about 8½ cents at one
1315 time.

Commr. ROGERS. Is that in the record?

Mr. PRETTYMAN. Yes; then it came down to the 7½ cents and when they put it into operation, they put it in at five cents. But throughout there was discussion with various War Department and other officials all through, between the bus companies and defense plant officials, and they were all in on the conversations.

Of course legally and officially the fare was fixed by filing the application with this Commission and going through the regular filing of tariffs and so forth. There never was any objection until this case was brought to the fares, the 5-cent fares, either the proposal at the time or at the installation of the 5-cent fares.

Commr. AITCHISON. How could an effective objection have been lodged to your tariff when filed?

Mr. PRETTYMAN. I am not an expert in interstate commerce practice, but I thought when the tariff was filed, there was an opportunity for the party to appear and file objections.

Commr. AITHISON. They might have requested a suspension of tariff, but if they had done so you would have had no tariff and you would have been prohibited by law from transporting anybody, and you could not probably have suspended it as being an initial tariff.

Mr. PRETTYMAN. Of course we went over there on a plea
1316 that we must furnish some kind of service to the Pentagon Building. I mean we have no particular ambitions to go across into Virginia. We don't otherwise, and as the Witness Taylor, who was a witness for the War Department——

Commr. ROGERS. You have no particular desire or ambition to go over there?

Mr. PRETTYMAN. It is a war service.

Commr. ROGERS. You were quite anxious for authority to institute service, were you not?

Mr. PRETTYMAN. Oh, yes, sure; we applied for it.

Commr. AITCHISON. Don't you recognize any duty at all, because you so generally serve the District of Columbia, to occupy that field and cultivate that intensively throughout its area?

Mr. PRETTYMAN. It is a very peculiar situation there, sir. Between our termini and the Pentagon Building it is not built up. There are residence areas around there served by these other bus companies. Now, so far as the Capital Transit Company is concerned, the way we got into this was as a war measure, war effort, to go over there.

Commr. ROGERS. You don't mean that you did not want to go over there, do you?

Mr. PRETTYMAN. Oh, no; certainly. We applied to this Commission for permission to go over there. But so far as the Capital Transit Company is concerned; as I say, there
1317 are the Virginia companies over there, and we did not otherwise cross the Potomac River.

Commr. AITCHISON. You have not still answered my question as to whether or not you feel that you have not a duty to cultivate intensively the field that you occupy here.

Mr. PRETTYMAN. Yes, sir; certainly.

Now, the fares on this line have been stated. They are 5 cents on the R–2 bus and District fare plus 5 cents on the Q–2 line. The District fares I believe have been stated. They are fixed by the District of Columbia Public Utilities Commission.

The figures show that we operate the Pentagon service from the termini to the Pentagon at a loss, before any return on investment. I will go into that in detail in just a moment.

The record shows we also have a great many routes outside of the District on the Maryland side, and that in all of those instances when you cross the District line there is a zone system, and the fares are a nickel or 10 cents a zone.

Commr. AITCHISON. Are you conducting those services at a loss?

Mr. PRETTYMAN. There are no separate figures, I believe, sir, for those operations.

Commr. AITCHISON. You did not show whether it is profitable for those services?

1318 Mr. PRETTYMAN. No, sir, our case falls into two parts, first the negative part, and then the affirmative part.

I should like to first discuss the negative points in regard to discrimination.

Commr. AITCHISON. Are you going to touch on the jurisdictional question raised by the State of Virginia?

Mr. PRETTYMAN. No, sir; we admit jurisdiction. We have no intrastate rights in Virginia.

Commr. AITCHISON. I mean the question of whether or not it should go to a joint board.

Mr. PRETTYMAN. No, sir; I did not intend to discuss that feature of it. If it is to be discussed, it will be discussed by one of the Virginia companies.

Commr. AITCHISON. Thank you.

Mr. QUIRK. That motion is overruled by the Commission, Mr. Commissioner.

Commr. AITCHISON. It is still here being raised, as I understand it

Mr. QUIRK. Is it?

Chmn. ALLDREDGE. Jurisdiction is always raisable.

Commr. AITCHISON. It is in the briefs.

Mr. PRETTYMAN. Now, on discrimination, the War Department put in an exhibit, which is Exhibit 12, in which they showed distances from various points in the District to the Pentagon
1319 and these other buildings. They select certain instances—Capt. Davis selected one here, and that is the nature of their case on discrimination—they select this point here, on the District line, and then they come down over the Key Bridge to the Pentagon and get a distance and then they go from that point down to these points, and in that way they get a longer distance to other points in the District than they do from that particular point in the Pentagon Building.

If you look at Exhibit 12, and figure the Capital Transit routes, and compare the Pentagon distances—the distances from various points to the Pentagon Building, you will find that in almost every instance except the distance to the Bolling Field, the distance to the Pentagon is longer.

Now, if you are going to make individual comparisons, why, then we get into a field of almost infinity. For example, if you take a person living at Dupont Circle, if he goes to the Munitions Building, according to Exhibit 12 he travels 2.6 miles; to the Pentagon Building he travels 6 miles, more than twice as far.

If he lives at Connecticut and Calvert Street, according to Exhibit 12, and works in the Munitions Building, he travels 3.6 miles, and if he goes to the Pentagon he travels 7 miles, twice as far.

If he lives at 16th and Columbia Road, according to Ex-
1320 hibit 12, and works in the Munitions Building, he travels 3.4 miles, and if he works in the Pentagon Building, he travels 6.8 miles, almost twice as far.

If he live at Wisconsin and Massachusetts and works in the Munitions Building, he travels 1.3 miles, and if he works in the Pentagon Building he travels 3.7 miles, more than twice as far, and so on through any number of not only individual instances that are shown in Exhibit 12, but any number of instances that you can select out of your own knowledge, because what we are talking about is the fares from any point in the District of Columbia over to the Pentagon Building.

Commr. PORTER. I don't understand your distances exactly. If a man would walk, it occurs to me from what I know of the city it would not be anywhere near your distances. You mean those distances are your routes; is that it? Is that what you get your distances from Dupont Circle? How far did you say it was then to the Munitions Building?

Mr. PRETTYMAN. According to Exhibit 12, 2.6 miles. That is a War Department exhibit.

Commr. PORTER: How many miles to the Pentagon Building?

Mr. PRETTYMAN. 6 miles.

Commr. PORTER. Well, then, that must be because of the way you are routing your busses. You are figuring by the routes that your bus makes, is that it?

Mr. PRETTYMAN. Yes, the distance he travels on the bus.

1321 Commr. Porter. Then the mileage you are giving us depends entirely upon the way you have routed your buses, does it not, and not upon actual distances?

Mr. PRETTYMAN. All distances spoken of here are bus distances, sir, yes. Now, the distances that I have given the Commission I took from the War Department exhibit which they put in to show discrimination. They put in an exhibit showing all these distances.

Commr. PORTER. Yes.

Mr. PRETTYMAN. And then they take one or two examples from all those distances, such as the one they mentioned here, to prove there is discrimination.

Now, if you will look at the other instances shown on that very exhibit, you will get the instances that I talk about to show just exactly the reverse and the point I make at the moment is if you are going to take individual instances, you can get any kind of comparison.

Now, the fact is, if you want to make a comparison, the fact is that that happens is that these people travel from various points in the District of Columbia down to these terminals, and then they get on the bus and go to the Pentagon Building. Now, the terminals are in the central downtown government area, 7th and Constitution and 19th and C, so that, everybody that works in

1322 the Pentagon Building travels 3.5 miles further from his home to the Pentagon than he would travel if he worked in one of the central downtown government bureaus.

So that if you are going to make any comparison, your comparison is, if a group of people—now, the War Department says that the average distance that these Pentagon employees travel in the District, before they get to the terminals, is 2.6 miles. Then they travel 3.5 miles from the terminal to the Pentagon Building. If you are going to make a comparison for discrimination purposes, this is the comparison. If one group of employees travel 2.6 miles to work, and another group of employees living in the same approximate neighborhoods travel 6.1 miles to work, or more than twice as far, is there any discrimination if the first group pays 8⅓ cents, and the second group pays 13⅓ cents?

Now, that is the only basis on which you can get at the discrimination if you are going to compare distances.

Now, the fact is, of course, here, that we have an urban fare fixed on the area of the District of Columbia. Now, an urban area of course must have uniform fares. There is no other prac-

tical way to work it that we know about, and so we have a uniform fare in the District of Columbia.

Commr. AITCHISON. How does it happen that you could not discharge passengers at the south boundary of the District there, wherever it is, near the Pentagon?

Mr. PRETTYMAN. You mean on the Virginia side?

1323 Commr. AITCHISON. Yes.

Mr. PRETTYMAN. We have no intrastate rights in Virginia.

Commr. AITCHISON. You mean you have no District rights.

Mr. PRETTYMAN. You mean after we get into Virginia?

Commr. AITCHISON. No; on the north side of the Pentagon.

Mr. PRETTYMAN. You mean the north side of what?

Commr. AITCHISON. Somebody said the District line ran through the north part of the Pentagon.

Mr. PRETTYMAN. Oh, well, that is not true, sir.

Commr. AITCHISON. Well, wherever it is over there, somewhere you cross the District line, don't you?

Mr. PRETTYMAN. Yes, sir.

Commr. AITCHISON. If you can tell me where it is, in answering the question, now, how does it come you do not stop at that point and discharge passengers?

Mr. PRETTYMAN. I think as a matter of fact we do. You understand, sir, there is nothing there for anybody to get off or get on. I really do not know the answer. We just practically do not.

Chmn. ALLDREDGE. Under your theory how far would that district line be from the Pentagon Building?

Mr. PRETTYMAN. By the upper route, where you come across the Memorial Bridge, it is probably two miles. From the lower route it is less than that.

Commr. AITCHISON. From the Pentagon Building?

1324 Mr. PRETTYMAN. Yes, sir.

Commr. AITCHISON. Just for our enlightenment, would it be possible for you to turn to the map and indicate where your idea is of the boundry?

Mr. PRETTYMAN. This line right along here, sir [indicating]. You understand this red line has not anything to do with the District, but it is right along here. I happen to be familiar with that controversy. Legally the District line is at the high-water mark on the south shore of the Potomac River in 1791.

Chmn. ALLDREDGE. And it is two miles from that mark to the Pentagon Building?

Mr. PRETTYMAN. If you go across the upper bridge and come down here it is 3½ miles from 19th and C so if you come across up here and come all the way down to the Pentagon that is it.

If you come across the highway Bridge, you would not go so far.

Commr. ALLDREDGE. Well, you would go across the river from the District.

Mr. PRETTYMAN. Yes, sir.

Chmn. ALLDREDGE. But where you would stop if you went to the line would be two miles from the Pentagon Building?

Mr. PRETTYMAN. Approximately so.

1325 Commr. MAHAFFIE. Is that the Cloverleaf distance or the straight line distance?

Mr. PRETTYMAN. I do not know that, sir.

Legally, as I said, the boundary is the high-water mark of 1791. Now, the problem has been that nobody can find out where the high-water mark of 1791 is.

The Congress appointed a committee; the Judiciary Committee of the House sat for days and nobody can find the high-water mark.

Now, the War Department put in an exhibit that some government engineers made up as to their idea of it. Well, the way the thing rests now is that that just is not decided, but it is the shore of the Potomac River. Now, if the high-water mark was away back up in country in 1791, the way some people guess, why, legally speaking, that is the boundary, but nobody knows where it is.

Commr. AITCHISON. You do not claim the high-water mark of 1791 is where the present high-water mark is?

Mr. PRETTYMAN. No, sir.

Commr. AITCHISON. It is something we will have to take judicial notice of. We are compelled to resort to the best evidence of what that is. Now, we have certain evidence in this record.

Mr. PRETTYMAN. Everybody I think agrees that whatever the boundary line of the District is, these busses cross it. Now, it

1326 would seem to us in the trial of the case that that is sufficient insofar as the jurisdiction of this Commission is concerned, and as far as the Commission would necessarily have to go.

In other words, there is no dispute on that fact.

Now, then, the War Department, however, tries to bring in what they call the probable boundary line, or the very likely boundary line, in order to show that in getting to the Pentagon Building, these busses just sort of have one wheel in Virginia when as a matter of fact we are in the District all the way.

Commr. AITCHISON. Would it be proper for the District Commission to require you to stop at that point and discharge passengers?

Mr. PRETTYMAN. I think so. It is just generally treated as the south shore of the Potomac River until somebody decides. I think there is a bill now in the house to decide it.

Commr. JOHNSON. If they required you to dump your passengers just before you got to the line, you would have to dump them right in the river?

Mr. PRETTYMAN. Yes, sir.

Commr. AITCHISON. I think this is somewhat similar to the Portland Railway, Light and Power case, where there was a 5 cent difference, and the boundary was shown to be up on the embankment, so they carried the 15-cent fare on outside the city.

1327 Mr. PRETTYMAN. You say there is no difference of facts here, sir?

Commr. AITCHINSON. Well, with respect to the difficulty of dropping either in the river or on the bank.

Mr. PRETTYMAN. Oh, yes; from that point; yes, sir. But the point in this case simply overall is this: That these people work at a point 3.5 miles further than they would from their homes if they worked in central downtown Washington, and they use the general service, citywide, urban service, to get to certain terminals and there they take a special service, as far as Capital Transit is concerned, an express bus that goes those 3.5 miles over to that building. They cross a geographical boundary line which is the river, and they cross a political boundary line which is the District of Columbia, and they cross a boundary line, which is likewise the District of Columbia.

Our point is that under those circumstances, we claim that there should and must be an additional fare.

Now, there has got to be a limit, of course, to the general fare, the urban fare, in any case. The urban boundary line is the political line, and here in the District of Columbia the political line is the boundary line to the uniform citywide fares.

Chmn. ALLDREDGE. What has that political boundary line to do with the fare, the reasonableness and propriety of the

1328 fare?

Mr. PRETTYMAN. It is the customary limit of the urban blanket fare. Secondly, it is the concept that where you have a political boundary line, such as the District of Columbia, which is a fare boundary line, you have a fare structure, inside of those boundary lines which balanced to a reasonable return on the property used and useful within that area.

In other words, let us take the District of Columbia and look at the facts as they are. The District Commission has jurisdiction over this citywide service of Capital Transit. Now, by Act of Congress they are supposed to keep that at that level of a reasonable return upon the value of the property. Now, as soon as you cross that line, cross the line of their jurisdiction, you get into an operation which they cannot take into account. It is cut off

legally, and that is another reason why the political boundary lines customarily are the lines.

Chmn. ALLDREDGE. Well, urban communities do not necessarily grows symetrically, do they?

Mr. PRETTYMAN. No, sir.

Chmn. ALLDREDGE. Any system of fares that is designed for an operation contemplates the future trend of conditions, does it not, necessarily?

Mr. PRETTYMAN. The future trends?

1329 Chmn. ALLDREDGE. Yes; the rate making is a projection into the future always, is it not?

Mr. PRETTYMAN. Yes.

Chmn. ALLDREDGE. Now, in the growth of these urban communities, under your theory, would you just take care of expansion within the political boundaries and extend your fare in that direction, and devise something else if the expansion in the same urban community took place outside of a political boundary?

Mr. PRETTYMAN. I am awfully sorry that I did not follow the question exactly, your Honor.

Chmn. ALLDREDGE. Read it.

(Question read.)

Mr. PRETTYMAN. The ordinary process there, if your Honor please, is that there is a point at which the zone system begins, as for example in our case in Maryland. That is the customary thing at the line. There is a big development in Maryland, and there is a zone system out there, depending—the fares depending on the district.

Chmn. ALLDREDGE. But you shape your zones in accordance with the political boundary lines rather than in accordance with transportation conditions, isn't that it?

Mr. PRETTYMAN. No, sir; the initial line in an urban area ordinarily and customarily is the political boundary line. That is the boundary line of the blanket fare, ordinarily.

1330 Chmn. ALLDREDGE. That is right, even though it is not symetrical and has no particular relation to the transportation conditions in the urban community?

Mr. PRETTYMAN. Well, that is ordinarily so; yes, sir. In other words, the blanket urban fare ordinarily covers the political unit. Now, as soon as you cross that line, ordinarily speaking, you begin a zone system, and of course you lay your lines, and as far as possible for the development of the community.

Chmn. ALLDREDGE. And the zone system is based upon political boundary lines; is that right?

Mr. PRETTYMAN. Ordinarily the beginning of it is, sir. After you get into the zones of course it is based on traffic distances,

and all that sort of thing, but the situation here in the District is not different from the situations all over the country. When these expert witnesses presented by the War Department said that there were various installations all over the country, and they were asked to name them, one of them named about four. One of them said Pontiac, Michigan, and Kansas City, and another one said Boston and Cambridge. Well, of course in those instances it is built up solidly. The cities are right together. There is not any question of being outside of the business area.

Now, the Witness Taylor operates a bus company right outside of Philadelphia, and he testified that his company,
1331 he would not take anybody unless they paid an additional fare. There was a little bit of a lap over just at the line, but he operates on the zone system outside of the political boundary line of the City of Philadelphia just like the Capital Transit does here.

Commr. LEE. Does the Capital Transit Company operate in Maryland directly or through subsidiaries?

Mr. PRETTYMAN. There is a subsidiary, but in most cases those lines are direct.

Now, the three points that Capt. Davis made with respect to discrimination, he said that the density of traffic had something to do with it, that is, the number of people that worked there.

Commr. AITCHISON. He was citing that as an automatic reason, as I understood it.

Mr. PRETTYMAN. I was going to comment that would go to the reasoning of the amount of fare, but not to discrimination. It would not bar——

Commr. AITCHISON. Why not; if he is comparing a line of very thick traffic with another line of very thick traffic it is perfectly proper to show how much the density is on the line that he is complaining about.

Mr. PRETTYMAN. But he is comparing, your Honor, a thick downtown traffic in Washington within a radius of an average of 2.5 miles of downtown Washington, thick downtown
1332 Washington traffic, with passengers on and passengers off and all that sort of thing, traffic control, with transportation that begins at a terminus and ends at another terminus, and travels nonstop right straight through.

Now, when he says density of traffic, what does he mean? The number of people on the bus? Of course, the operating conditions are totally different, absolutely different. There is no similarity at all.

Now, I want to comment on the cost evidence. We put in an exhibit, Capital Transit put in an exhibit, Exhibit 89, in which

the chief accounting officer of the company calculated the cost of this operation——

Chmn. ALLDREDGE. What is that number?

Mr. PRETTYMAN. Exhibit 89. And he explained it in detail in the record beginning at page 643. He used system figures except in those places where he had specific figures on what we call the Pentagon operation. By the Pentagon operation we mean the operation of these two routes from downtown Washington to the Pentagon Building—our company has in the record exact wages on the Pentagon operation, and he therefore used the exact wage figures, and otherwise made computations on the system basis.

We also had a record of the busses, number of busses, and that sort of thing, and that was all entered into this and explained in detail in the record.

1333 Now, opposite to that, in answer to that—Well, I might say Exhibit 89 shows that we operate this at a loss before any return on investment.

Commr. LEE. Was that busses owned or leased?

Mr. PRETTYMAN. We have some leased busses, but the vast majority are owned. Some of the leased busses are used in this operation.

In answer to those figures, the War Department put on two witnesses, Witness Dixon and Witness Taylor. Now, Witness Dixon put in an exhibit, which is Exhibit 101. On cross examination this developed—Exhibit 101 is in three columns of figures, and then it is divided crosswise in the middle.

What Witness Dixon did was to take the system figures of the Capital Transit Company, and then he took the number of miles operated in the Pentagon operation, and by dividing the miles into the system figures, he got a per mile for a certain number of his figures, and applied that and called that "Pentagon Cost," and then the second half of his figures are on an hourly basis, and by taking the number of miles in the Pentagon operation and using 17 miles per hour as the time in the Pentagon operation, he got certain per hour figures.

He then added his per mile figures to his per hour figures and got a per passenger cost.

1334 Now, on cross-examination he testified that he had not been shown the testimony of the case and he had not been told two things. He had not been told that the actual wage figures for the Pentagon operation were available. In other words, he used a system wage figure.

The second thing he testified to was that he understood that 17 miles per hour was the over-all time, and he had not been told that the 17 miles per hour in the record was the running time,

just the running time between termini, and did not include the time from the garage and so forth.

Commr. AITCHISON. It did not include the time from what?

Mr. PRETTYMAN. From the garage to the terminal, which is of course part of the operation.

Now, he said if he had known those facts, he would have used those figures in his computation, and we asked him to make the corrections and he declined to do so, so we put on a company witness who made those two corrections, and came out with a cost of 5 cents for this Pentagon operation.

Now, Witness Taylor—I see I must finish—Witness Taylor did not present any cost data at all. He did not present any cost data. He said that in his opinion, in this sort of operation, the company could make money at 1½ cents per mile.

A little bit later he shifted down to a cent and a quarter, and on this type of operation, Taylor did not show
1335 that he had ever had any experience in urban operation, but only suburban operation. His company was such and everything he testified to was suburban operation, and our 5-cent trip to Pentagon is of course less than a cent and a half for that operation.

Furthermore, Taylor made it plain when he said you could operate for 1¼ cents or 1½ cents he meant that you had counterflow traffic. In other words, you could bring passengers over there at 1¼ cents, and bring them back at 1¼ cents, and over-all you could have a profit, but he declined to face the question of what kind of a situation you would be in where you do not have a counterflow of traffic, where you either leave your busses over there all day and let your bus operators come back or where you come back empty, so that his figure of 1¼ cents is based on counterflow traffic, and in this case there is no counterflow traffic.

So that the War Department testimony opposing our figures was completely disproved by cross examination.

Now, I would like to briefly, just in a moment or two I have left, outline the affirmative side of this case from our point of view.

In the first place, the War Department was on full notice that there would be an additional fare of 5 cents. The Capital Transit Company formally in writing in August, 1941, before the
1336 Pentagon Building was located where it is, notified the War Department there would be an additional fare of 5 cents if the building was put over there.

In the next place we say that the 5-cent fare is reasonable for the service. It is less than 1½ cents a mile for this suburban operation.

The way the War Department get their figures of cost is that they take testimony relating to this suburban operation, presumably where there is counterflow traffic, but there is not any in our case—they take a cent and a half—and then they apply that figure to the urban operation as well, and say if you apply that figure, that they build up for running between the termini, to the operation in the District, and average from home to Pentagon Building, you get such and such a figure.

This is an express service, as we have said. It was referred to as such. It has been referred to over and over again as a first-rate service.

Commr. LEE. A what?

Mr. PRETTYMAN. A first-rate bus service. These questionnaires that were put out, in this case the War Department put out 50,000 questionnaires to the employees and had a blank on it for comment, and when we came to look at the questionnaires, counsel finally stipulated that a majority of the people who made any comment at all said that the bus service was good, very good
1337 or excellent, and that was the result of the questionnaire that they put out.

In the next place, No. 2, is that these fares are similar to the fares of the company outside the District line in the other directions, and in Maryland.

Commr. AITCHISON. Are your circumstances surrounding the traffic similar in the other directions?

Mr. PRETTYMAN. I would think so, sir.

Commr. AITCHISON. What does your record show?

Mr. PRETTYMAN. I don't think the record has any detailed description of traffic in those other directions. There is the Naval Hospital out there. There is not the same——

Commr. JOHNSON. Is there any express service in those directions?

Mr. PRETTYMAN. No, sir.

Commr. AITCHISON. Have you got anything about express service, for instance, to the Naval Hospital?

Mr. PRETTYMAN. They stop at Bethesda.

Commr. AITCHISON. Beyond that they go straight through?

Mr. PRETTYMAN. Yes; but that is a couple of miles beyond the District line you strike a sparcely populated area. We put in Exhibit 60 in which we showed other suburban fares in the eastern United States. It is not a picked list. It was simply a list put in for whatever it might be worth of various other suburban fares.

We showed by Exhibit 89 that this operation is less in
1338 cost, and finally, some time ago, the Regional Committee of ODT became interested in this matter of these bus fares

and Senator Burton became interested in it, and the request was made that an impartial expert be asked to make an inquiry and Mr. Blanning, of the Motor Carrier Division of this Commission, was asked to make an inquiry and make a report. He did that, and his report said that 13⅓ cents—that is the District fare plus a nickel—was the fair and proper fare.

Well, then, the Regional Committee of ODT adopted that report, and suggested to the company that they accept it. The companies formally accepted that offer, that the rate be 13⅓ cents, as recommended by Mr. Blanning, and as recommended also by the Regional Committee. That is an independent opinion, of course, not made in an official capacity, but of an independent highly regarded expert who made it at official request.

Commr. AITCHISON. Did Mr. Blanning show competency to fix urban fares or suburban fares?

Mr. PRETTYMAN. We assumed it, sir.

Commr. AITCHISON. My understanding is it is the first time we have had occasion to deal with this, and Mr. Blanning is qualifying as an expert along those lines. I suppose that makes your record according to his testimony, would it not?

1339 Mr. PRETTYMAN. He did not testify. His report appears in the record as an exhibit.

Chmn. ALLDREDGE. Mr. Quirk.

Argument of Robert L. Quirk

Mr. QUIRK. If the Commission please, I appear in this proceeding as counsel for the Alexandria Barcroft and Washington Transit Company, which is one of the Virginia companies, and is a respondent. I will call it the A. B. & W.

Commr. AITCHISON. Do you think it would be helpful if you could indicate on the map just where that line runs?

Mr. QUIRK. Well, that would not be too easy, but it runs to 12th and Pennsylvania Avenue over each bridge——

Commr. AITCHISON. To all four buildings?

Mr. QUIRK. Over several routes. It would be hard for me to find them on this particular map.

Commr. AITCHISON. Does it do any any other business? It has got Alexandria and Barcroft both in the name.

Mr. QUIRK. I am going to try to tell you about it, Mr. Commissioner.

Commr. AITCHISON. Very well.

Mr. QUIRK. This company and its predecessor company, which was an electric railroad, has been operating to various points in Virginia, including Alexandria, Virginia, and other points, and the District, for over 40 years.

It has limited rights, as I understand the situation,
1340 within the District so far as intradistrict service is concerned. It has unlimited intrastate rights in Virginia.

It is primarily a Virginia company, and a substantial part of its traffic is intrastate. However, the traffic between the District and Virginia is also important. The traffic that is involved in this particular case represents about 15 percent of its total revenue, that is the revenue from this traffic is 15 percent of its total revenue.

It is of interest to point out at this time that this company and its predecessor have been transporting Virginia residents who work for the government into the District of Columbia at a 10-cent fare for at least 20 years, and there has never been any complaint about that fare. They also transport those same people and others from the District to Virginia.

The respondent is the only one that serves each of the Federal buildings in Virginia that are involved in this case. Incidentally, the service of these buildings requires 551 additional miles per day in the operation of the A. B. & W.

Mr. Commissioner Aitchison asked about the time between 12th and Pennsylvania and the Pentagon Building. The scheduled time for the A. B. & W. is 12 minutes.

Now, insofar as the Pentagon Building is concerned, it operates during rush hours on four-minute headways, and performs a 24-hour service.

1341 To the Navy Annex it operates on eight-minute headways, non-rush, except late at night. Then the service is reduced. This is also on a 24-hour basis.

To the Army Air Forces Annex and the National Airport it operates on a 15-minute headway from 5:30 a. m. to 2:30 a. m. No service between 1:30 a. m. and 5:30 a. m.

Now, the rush-hour service is handled according to the demands. In other words, they put into rush-hour service all the busses that are available and are fit to be used at the time, and that the demand requires.

Now, in the case of the A. B. & W. no particular busses are assigned for the service between the District and these particular Federal buildings. In other words, passengers between the District and these Federal buildings are carried on the same busses on which are carried other passengers going to other points in Virginia, and on which are also carried intrastate passengers within Virginia.

The standard fare of this company between the Federal buildings and other points in Virginia and the District is 10 cents. It has a 26-ride ticket which is sold for $1.95 which is at the rate

of 7½ cents, which is good between the Army Air Forces Annex and the District. It has an intrastate fare between the Navy Annex and the Virginia side of the Memorial Bridge of 5 cents.

At the request of the Navy Department, and for the
1342 convenience of the passengers, it does discharge and pick up those passengers at the Memorial Bridge on the District side.

Now, as I understand this case——

Commr. LEE. You mean immediately on this side of the bridge?

Mr. QUIRK. Yes.

Commr. LEE. Or over at 20th and Constitution.

Mr. QUIRK. No. The record shows that although we have got a 5-cent intrastate fare, not an interstate fare, at the request of the Navy Department, and for the time being at least, instead of putting the passengers off on the Virginia side of the Memorial Bridge, we carry them across the bridge and let them get off the bus, and other passengers get on the bus at the Memorial Bridge on the District side.

Now, I say that is done for the convenience and at the request of the Navy Department.

Now, as I understand this case, the complaining parties, which happen to be the Secretary of War and the Secretary of the Navy—the Secretary of Commerce intervened, but has taken no part in the case—it appears to be that the District fares now maintained by the Capital Transit Company, and by the other companies, insofar as they have an intrastate or intradistrict service within the District, should be extended to these Federal
1343 installations, not that they should be extended to other points in Virginia, but just to these Federal installations.

But so far as my client is concerned, it already maintains a district fare of 10 cents, a cash fare, and a 7½-cent fare to the Army Air Forces, when you buy a book.

Of course my client can't control what the Capital Transit Company does or refuses to do. That is quite obvious.

Commr. AITCHISON. Do I understand that if I were to get on at 12th and Pennsylvania Avenue and want to get off at the Highway Bridge, you would discharge me and charge 10 cents?

Mr. QUIRK. Yes. And incidentally, we once had a 5-cent fare within the District and the Public Utilities Commission of the District required us to put it on the 10-cent basis which is the fare that the Capital Transit Company uses. I suppose it did that in fairness to the Capital Transit Company.

Commr. MAHAFFIE. Why do you limit the book to the Army Air Forces?

Mr. QUIRK. That is not explained. I can't answer it. It is not explained in the record. I don't know why they do it. Probably there has been no other demand for it.

Commr. MAHAFFIE. Is that an unlimited book as to time? Can it be used indefinitely?

Mr. QUIRK. I think it is a month, per month.

Mr. HILL. 60 days.

1344 Mr. QUIRK. 60 days. The theory underlying the complainants' case, as I understand it, is that each of these companies could, if forced to join—assuming that they could be forced to join against their will in joint fares between Virginia and the District—could establish the 10-cent fare, or the regular District fare with the books and passes and so forth, and because of their present earnings, which are greater than they have been at other times, they would still have left a fair profit on the over-all operations.

Well, in the first place, these passengers from the District who use the Capital Transit Company also use the streetcar part of the Capital Transit Company. Many of them do. A large part of them do. The power of this Commission to establish joint fares is limited to common carriers of passengers. This Commission does not have the power to establish joint fares between a motor carrier of passengers and a streetcar railroad, or any other railroad for that matter.

So you have there at the threshold of this case, and one of the important things is this question of power, wholly aside from the zone angle. You do not have to labor this point, because the law is very plain on it.

Commr. AITCHISON. Well, the law is very plain, is it not, that if the Capital Transit is guilty of an unjust discrimination in

1345 that is gives to passengers on certain bus lines or from certain motor carrier areas subject to our jurisdiction a transfer on a street railway line which is not subject to our jurisdiction that we can require it to give it to them all?

Mr. QUIRK. You mean so far as the discrimination is concerned?

Commr. AITCHISON. Yes.

Mr. QUIRK. Of course, you can require them to do one thing or the other. I don't know that you can require them to do a particular thing. Perhaps you can. I have tried to persuade you on a few occasions that you could, and you ruled the other way, and in the Supreme Court Texas and Pacific Case, 289 U. S. they held that a discriminatory order should be in the alternative so if you are going to approach this from the standpoint of discrimination——

Commr. AITCHISON. Unless you paid some attention to the footnotes in that case.

Mr. QUIRK. I paid a lot of attention to the sense of that case, too, but anyway, on the question of discrimination, and I am getting off my other subject, on the question of discrimination of course it would not help these employees at all if you entered an alternative order, which according to the Texas Pacific Case, you probably would have to do, and the Capital Transit Company, which is the only one you could enter discriminatory order against, if they should elect to simply increase the District fares, they would
1346 be in hot water there with the District Commission.

I don't know just what they would do. They would just be in a fix, and an unhappy one, but that would not help these employees at all.

So that their great efforts on discrimination apparently overlook the fact that if it were in the alternative, and the Capital Transit saw fit to increase the one, they would be worse off than they are now, or no better off.

Commr. AITCHISON. Is it your thought that we have to give the alternative when the taking of the alternative would involve a violation of law?

Mr. QUIRK. Well, Mr. Commissioner, I am going to be perfectly frank with you. I think that when you read the dissent in the Texas Pacific Case, and the Supreme Court text, I don't believe it would stand up today. That is my opinion about it. You would probably not have to.

Chmn. ALDRIDGE. One question. I do not want to take up much of your time, but if the Commission were precluded from prescribing joint fares, would that necessarily mean that it could not prescribe a proportional fare over your line?

Mr. QUIRK. Well, you know, Mr. Chairman, I am getting so I hesitate in saying that an administrative body can't do anything. At the moment I don't see any occasion for you to do it. I think you would be looking for devious ways of reaching a point you
1347 could otherwise reach—perhaps you could—I am not willing to concede it at the moment. We have not approached that standpoint—you could prescribe a joint fare if there was any basis for it here applicable to the Capital Transit bus lines. That would create great confusion in the District, but however on the other side they have a very novel solution of that. They say that inasmuch as the District Commission requires transfers between busses and streetcar lines, that that would solve that problem.

However, if the Capital Transit Company elected to say, "As to interstate commerce, we will not follow the District Commission on transfers," I think they would be on the right side of the question.

There would still be confusion, however, and that would be the most unhappy way to do it. I think the best solution that has been

suggested in connection with this case thus far is that made by Mr. Blanning, which is that the 13⅓ cent fare voluntarily be established, that we agreed to do.

Commr. LEE. Why wasn't it done? Why wasn't it established?

Mr. QUIRK. Because the War Department would not accept it.

Commr. LEE. Do they have to give their consent?

Mr. QUIRK. Well——

Commr. AITCHISON. Did they give their consent to your
1348 rate?

Mr. QUIRK. No. Well, I don't know how to answer that. Going back to the negotiation period before the buildings were put up over there, there was no complaint about the fares. We received none. Our fare has been 10 cents, as I say, for 20-some-odd years, and more than that——

Commr. AITCHISON. Well, in answer to Commissioner Lee, can you answer it?

Mr. QUIRK. I don't believe I caught your question, Mr. Commissioner.

Commr. AITCHISON. The question is whether or not you needed to have the War Department's consent before you named the fare.

Mr. QUIRK. Well, no, we did not have to have their consent, but we were trying to solve this problem and meanwhile the ICC instituted this investigation.

Commr. LEE. Was it in the meantime or wasn't it sometime thereafter?

Mr. QUIRK. It was soon thereafter, Mr. Commissioner. This matter of negotiations with this Regional Committee has been going on almost for the last year or ever since the Pentagon Building was talked about, established and occupied. There has been no end to it.

Now, we could put the fare in. Of course there was some suggestion made by Mr. Blanning which would eliminate cer-
1349 tain 5-cent fares, but probably it might make necessary a proceeding with the OPA.

Of course we are common carriers, and as common carriers we could file a tariff so long as we notified the OPA.

Commr. LEE. Well, you claim that the right thing to do now is to put Blanning's rates in, but you did not put them in. That is the point I make.

Mr. QUIRK. No; we did not put them in because the War Department indicated they would not be satisfied with that and we were faced with this proceeding anyway, and I am suggesting now——

Commr. AITCHISON. Well, you were not interested in this proceeding at the time the Blanning suggestion was made.

Mr. QUIRK. Not at that time, but the negotiations process was going on. But anyway I don't see that that makes any difference one way or the other. If the Commission agrees with me that that is a solution of the matter, my client will put them in, if Capital Transit is willing.

But I am merely suggesting in all seriousness that with the difficulties that this Commission faces on the joint fare angle of the case, that it is one of those kinds of cases where there should not be any exercise of maximum rate power. I don't think there are any facts to justify forcing the A. B. & W. to join in even a 13⅓-cent fare. There are no facts here to show that our fares are high.

1350 The other side are relying entirely on the net returns from system operations and our returns here are about 15 percent of our total.

Now, on that phase of the question, Mr. Commissioner Patterson, after consulting with the Commission, and after a delay of several days between hearings, ruled that evidence as to rate basis or value would not be acceptable. So you can't determine in this case even whether the overall returns are fair or unfair, because you have ruled out a rate base, and if you are going to consider the rate base or value, it will require several months of hearings.

The Public Utilities Commission of the District is now considering that very question in connection with the Capital Transit Company.

There are any number of decisions of course of this Commission and the Supreme Court--they are all in my brief--which hold that the net returns from system operations are not relevant or material in considering whether particular rates on particular commodities or particular services are reasonable or unreasonable. It works both ways.

For example, if the War Department is sound in the contention they are making here in this respect, then it would follow that in a year or two, if we had a deficit from our entire operations, our management could say, based on that principle, that

1351 they are advocating, "Here is a nice bunch, 35,000 people in one pot over here; we will increase their fares to help make up the deficit and we will leave the rest of the fares as they are."

Chmn. ALLDREDGE. Sometimes they do it that way.

Mr. QUIRK. It has been done, I suppose, and sometimes this Commission has stopped it, too. My brief is full of decisions that you have held that you will reduce a rate that is unreasonable where a railroad is operating at a deficit from over-all operations. That is exactly the point I am making.

Commr. ROGERS. Mr. Quirk, taking the Capital Transit, if there was not an additional fare from the District to these buildings, would there be any incentive for the Capital Transit to engage in that service?

Mr. QUIRK. Well, as I understand it, Mr. Commissioner Rogers, from talks with Mr. Merrill, and his testimony in this case, the Capital Transit established that service with some misgivings, and there is very interesting testimony in the case about the capacity of the bridge to hold the busses—not physically, but to carry the busses in rush hour periods.

They established service at the request of General Somervell and others. I don't think it is a service they wanted to establish, but I can't speak for them.

Commr. ROGERS. Would they get any more or less patronage in the District if they did not perform this service than
1352 they do performing it?

Mr. QUIRK. I think not. I don't see how they could carry any more. In the rush hours now they are hanging out the windows.

Commr. ROGERS. I did not know that was true all over.

Mr. QUIRK. They only operate in rush hour periods, you understand.

Commr. AITCHISON. One of three things has got to happen. Either the government will go into this business itself, or the Capital Transit develops the area over there, or admits some competitor.

Mr. QUIRK. Any of those things are possible, I suppose.

Yesterday Mr. Prettyman suggested there are three bus lines over there now.

Commr. AITCHISON. But you do not serve the entire District.

Mr. QUIRK. We don't serve the entire District; no. We serve from 12th and Pennsylvania Avenue, and some intermediate business there, under the permission of the District Commission. We are governed entirely on that intradistrict fare by the District Commission and we have not raised the jurisdictional question on that point.

Of course, I recognize that you either have jurisdiction or you don't, and we can't concede it if you don't have it, but on the facts of this case as I understand it, and the law
1353 as I understand it, I think this Commission has jurisdiction over our fare so long as you do not attempt to force us to join the Capital Transit in a joint fare that is going to be used on streetcar lines.

Mr. Commissioner Aitchison asked about the number of trips. We operate over 300 trips a day.

I would like to make one comment. Do you want to take up the next phase at this point?

Chmn. ALLDREDGE. You go ahead and make your comment.

Mr. QUIRK. Mr. Mathews made some statements about Exhibit 60, which is the one that compares the fares in other districts and cities and suburbs and urban communities with the fares here.

I am sure Mr. Mathews did not mean to say precisely what he did say, but he made a rather expansive statement about what the evidence shows as to that exhibit. That exhibit is like a good many other comparisons that are put in rate cases before this Commission. It shows that the average fare in many communities is around 7½ cents for the zones, just as the District fare here is 8⅓ cents with the coupon. We don't know exactly what it is with the book. But I think this is a case, if the Commission please, where the Commission would be justified, after you weigh all
the evidence, and consider all the difficulties, of simply dis-
1354 missing the complaint, with the recommendation that the
recommendation of Mr. Blanning, not because it was Mr. Blanning, but because it reasons the thing out very well, and because it does offer what seems to be a rather reasonable solution and a reasonable way out of a very difficult matter from the standpoint of this Commission.

Commr. MAHAFFIE. On the Blanning recommendation, you said the 5-cent modification was somewhat in question. Is that of considerable consequence?

Mr. QUIRK. Well, it is of consequence in this sense, that it would represent an increase and we would have the OPA to consider.

Commr. MAHAFFIE. I mean in money does it amount to a considerable proportion?

Mr. QUIRK. Yes; it amounts to a great deal. We are taking passengers for 5 cents from the Navy Annex, but not from any other place over there, into the District on an intrastate fare, just because the Navy Department asked us to do it.

Commr. AITCHISON. Point that out on the map, can you? Where is that? Where is your 5-cent fare?

Mr. QUIRK. The 5-cent fare is from that Navy Annex at this point over to the Lincoln Memorial at the D. C. end of the Memorial Bridge, and the fare was filed of course, intrastate fare,
at the west end of the bridge. No transfer facilities are
1355 there. Capital Transit operates regular service to the Lincoln Memorial, and therefore the service from the Navy Annex to that point makes a direct connection with District transportation facilities.

Commr. PATTERSON. That makes an overall 13⅓-cent fare, doesn't it?

Mr. QUIRK. Yes, sir.

I have one more sentence. There was quite an effort made throughout the hearing in this case, not so much in the argument today, to create the impression that the employees on that have reasoned as one man. Now, the CIO got out handbills and handed them to the employees and told them to write, wire or do whatever they could to persuade this Commission to knock off the extra fare, and out of that whole group of some 40,000 employees, 2,000 were persuaded to sign a petition which of course is irrelevant anyway; but it was filed here, and there are your——

Commr. AITCHISON. That simply means the other 38,000 were a little more ethical.

Mr. QUIRK. Well, I don't raise any question of ethics about the petition.

Commr. AITCHISON. You did in your brief. Somebody did.

Mr. QUIRK. I did; I think. A party to this case that will hand out handbills and ask them to write, wire, and telephone the Commission is guilty of unethical conduct, but I do not think they knew any better.

1356 Chmn. AITCHISON. The Commission will recess until 2 p. m.

(At 12:30 p. m., a recess was taken until 2 p. m., the same day.)

1357 AFTERNOON SESSION—2:00 P. M.

Chrmn. ALLDREDGE. Mr. Hill?

Argument of Wilmer A. Hill in behalf of the Arlington & Fairfax Transportation Co.

Mr. HILL. May the Commission please, I appear here in behalf of the Arlington and Fairfax Motor Transportation Company. That is the company that has its busses on Twelfth Street here, headed south towards Constitution Avenue, perhaps half way down the block from Twelfth and Pennsylvania Avenue.

Incidentally, the smallest of the four Respondents and the one route that is losing the most relatively, if the War Department and the Navy Department should prevail in this proceeding.

I might mention at this time, too, that that terminal is an extremely undesirable one from the standpoint of the Arlington and Fairfax from the former terminal which was at Tenth and E Streets, that terminal being much nearer to the shopping district.

They were required, however, by the Office of Defense Transportation in the interest of conservation of fuel and tires, to move to the present location, and have not been able to persuade the O. D. T. to permit them to move from there.

The Arlington and Fairfax serves two of the installations
1358 which we are here considering; that is, the Pentagon Building and the Navy Annex.

It serves these two installations by two routes—one down Twelfth Street, Fourteenth Street, across the Highway Bridge, and to the Pentagon, and then to the Navy Department.

The other extends substantially the same, except that it runs out Constitution Avenue and across the Arlington Memorial Bridge.

The Navy Annex lies 1.2 miles beyond the Pentagon, and I think that Capt. Davis' tongue slipped when he said this morning about half a mile.

The record shows it to be 1.2 miles.

Commr. PORTER. Do you serve any other territory, Mr. Hill, except that that you have just described?

Mr. HILL. Oh, yes, Mr. Commissioner. The Pentagon and the Navy Annex, roughly, lie about midway on the lines of the Arlington and Fairfax; that is, midway between their terminal at Twelfth Street Northwest, in Washington, and the end of their lines in Virginia.

One line ends up just beyond Clarendon on Glebe Road, North Glebe Road. The other main line ends up at Sixteenth and Madison Streets, and it is just about as far beyond in Virginia that they travel as the distance from these installations to the terminal in Washington is.

Commr. MAHAFFIE. What percent of the gross of that
1359 concern is derived from this business?

Mr. HILL. About 25 percent.

Commr. PORTER. Does part of that come from over in Virginia, the other end of your line, to the Pentagon as well as from the Washington end to Pentagon, say?

Mr. HILL. No. Perhaps I did not understand Commr. Mahaffie's question.

About 25 percent of the revenue of the Arlington and Fairfax is derived from the traffic which is here at issue.

Commr. PORTER. Well, but what I mean is, do you get some of your traffic from over in Virginia to the Pentagon or is practically all of it from down here on Twelfth Street to the Pentagon?

Mr. HILL. We do get traffic from the Virginia points to those installations. The record does not show how much.

Commr. PORTER. I see.

Mr. HILL. And it is extremely difficult for Arlington and Fairfax to tell because of the zone basis of fares there is no way to

segregate it and say how many passengers went there and how many came on into Washington.

I might at that point mention, Mr. Commissioner, since I have been asked concerning the subject, since there has been some animadversion on the part of the War Department and the Navy Department as to our failure to introduce an exhibit showing segregation of the revenues and expenses received from
1360 the two classes of traffic, we called in a certified public accountant to endeavor to see what could be done in reference to those figures as to this particular service which is here being considered; and we found that it would take not less than six months' time to prepare the figures and would cost between seventy-five hundred and ten thousand dollars to have the necessary figures drawn up, and that they would be based so largely upon hypotheses and assumptions that, after all, they would be worthless.

This case has been handled by the Commissioner, and I assume with the authority of the Commission as in the nature of a complaint and answer case.

The War Department was offered by us an opportunity to examine our books if they wished, and we offered them permission to have photostats prepared of any figures which they sought and which we found ourselves unable to prepare.

We offered to open the books to investigation by the War Department, by the Navy Department, or by the Commission itself, and offered to permit any use to be made of the books and the records if they think they can do something which we say we cannot do.

We do not feel that any onus should be cast upon us because of our inability to produce something that the War Department has referred to quite regularly in their brief.

Mr. Commissioner Aitchison asked the question about the
1361 matter of Joint Board jurisdiction.

Mr. Commissioner, that issue was raised at the hearing by Mr. Kepner, representing the Virginia State Corporation Commission. No one of the Respondents and no other party joined in that motion.

Everybody maintained very stern silence and that was the end of it, as nobody has touched it on brief, so far as I know.

Commr. AITCHISON. Well, is it not in the brief of the Virginia Corporation Commission?

Mr. HILL. Well, I have not seen their—you mean their reply brief, Mr. Commissioner?

Commr. AITCHISON. Reply brief.

Mr. HILL. I had not seen that.

Mr. QUIRK. It just came in this morning.

Mr. HILL. I think I am safe in saying that other than the Virginia Commission, nobody questions the Commission's authority to set the hearing before the Commissioner and the Examiner, nobody except the Virginia State Corporation Commission.

Commr. MAHAFFIE. Is your client agreeable to the so-called Blanning solution?

Mr. HILL. We accepted that, Mr. Commissioner, and I assuming having made the bargain we will stand by it.

Commr. LEE. Well, were there not two horns—were there not two horns to that Blanning matter? Did not Blan-
1362 ning recommend a reduction and also an increase, or was not acceptance based on an increase?

Mr. HILL. Well, on some slight increases.

Commr. LEE. I don't know whether Blanning recommended an increase or not, but was not the acceptance conditioned on an increase?

Mr. HILL. I think I can give you the details very briefly, Mr. Commissioner. They are these: That we would agree to a 13⅓ cents joint fare between all points in the District, even by street car, also to these installations.

That is first. This fare was to be evidenced by coupon tickets, 12 trips for $1.60, and they were to be sold to the employees of these installations.

At no time was there any agreement as to the straight 10 cent fares of the Virginia Company for the so-called casual passengers.

Now, certain rates of fare between points in the District and Virginia were to be eliminated. The 5 cent fare of the Arlington and Fairfax between Memorial Circle and the Navy Annex or Pentagon Building was to be eliminated. That was to come out. You heard quite a bit about that one this morning.

The 5 cent fare charged by Capital Transit from Nineteenth and C to and from the Pentagon Building was to be abandoned,
1363 and the same fare structure used on the Q-2 Route from Seventh and Constitution Avenue was substituted from Nineteenth and C.

Third, the 7½-cent interstate fare charged by the Arlington, Barcroft and Washington Transit Company from Washington to the Army Air Forces Building, was to be eliminated. Mr. Quirk mentioned that. That is his client. And the 5 cent fare of the Arlington and Fairfax from Rosslyn to these installations, that is the intrastate fare between Rosslyn and the Navy Annex, was to be abandoned and that rate increased to 10 cents cash, or a 15-cent round trip, which would be 7½ cents; instead

of the present 5 cent one-way fare it was to be 15 cents for the round trip.

Commr. MAHAFFIE. Had that fare been recommended by the Virginia Commission?

Mr. HILL. I do not believe that it was prescribed by the Virginia Commission; I think not. I think it was put in at the instance of the War and Navy Departments.

Now, that summarizes the effect, or explains the effects of the plan, but that was with this understanding—you were asking about it this morning—and I read from the letter of acceptance of the proposal in Paragraphs 1, 2 and 3, above, which I have given you:

"* * * are the substance of an agreement which the undersigned companies can agree if and when your Committee
1364 shall obtain from the proper regulatory agencies both Federal and State, their consent to the establishment of this fare structure within the area specified and upon the fares set forth being made effective."

I should explain that "your committee" in there means the Committee of the Office of Defense Transportation which had been negotiating with the companies since about August, 1942, for some basis of fares.

Now, it was at that time, as I recall it, that the War Department intervened in the negotiations and no consent was ever forthcoming from the Committee from the O.D.T. from the War Department, or from anybody else I can think of.

And there it stands, but we do not want this record to be left indicating that the companies have withdrawn from their agreement. That is not so. A part of their agreement has not been fulfilled by the other parties to it.

Commr. AITCHISON. Who were the regulatory bodies that are contemplated by that contract that you speak of?

Mr. HILL. I assume that one would be the Virginia Corporation Commission, Mr. Commissioner, and one would be the Office of Defense Transportation, because of the increases of fare in those instances I mentioned.

Commr. AITCHISON. How about the Office of Price Administration and the Economic Stabilization Administration?

Mr. HILL. If I said O.D.T, I meant O.P.A.

Commr. AITCHISON. You said O.D.T.

1365 Mr. HILL. Did I say ODT?

Commr. AITCHISON. Yes.

Mr. HILL. I should have said OPA.

Commr. AITCHISON. Has the matter been presented to them?

Mr. HILL. Yes; it was sent to the Office of Price Administration and I think that it was from the Office of Price Administration the

War Department obtained the Blanning Report, if I recall the facts in the record.

Chrmn. ALLDREDGE. No; obtained it from me.

Mr. HILL. Am I wrong about that?

Chrmn. ALLDREDGE. Yes.

Mr. HILL. From you. Well, I was not sure about the details of that. But in any event, there stands the agreement and here we stand, hand-cuffed.

Now, I would just like to touch very briefly on the question of the boundary line of the District that was discussed at some length this morning. That question was discussed at some length during the hearing and the map which was prepared by the engineer for the War Department was received in evidence over very bitter protests from the Respondents.

Finally, after the counsel for the War Department had shifted rather rapidly from one foot to another over a considerable
1366 number of pages of the transcript, the Presiding Commissioner, Mr. Patterson, ruled at page 78:

"It (that is this exhibit showing the figures 1791 high-water mark) will not be used by the Commission for the purpose of determining boundary lines between the District and Virginia. That issue is not here."

We did not feel called upon then to meet that issue, of course, and there is nothing more in the record about it. We dropped it. It is not here. We all concede that there is interstate traffic involved in this case.

One question that was raised this morning when other counsel were arguing was the interest of the employees in this proposed reduction or this reduction which the War Department and the Navy Department is asking for.

I think Mr. Quick said that the Commission is asked by counsel for these two Departments to believe that the employees themselves rose en masse in protest against it.

I would like to call your attention to two exhibits of record in this case. Exhibit No. 18, which was introduced in evidence by the War Department, which shows that over 40 per cent of the employees covered by that exhibit, there were a large number, did not take advantage of the cheapest fare they could get, either in Virginia or in the District of Columbia. That is their exhibit, over 40 percent.

Now, Mr. Locke, Traffic Engineer, of Capital Transit, had
1367 a traffic count made, and put it in evidence as Exhibit 90, and that exhibit shows some very interesting figures—the score of the interest of these employees.

On the 4th of August, 1943, between the downtown terminal of the A. B. & W. and the Army Air Force Annex, 1,193 passengers

traveled at the 7½-cent fare. That same day 1,251—that is 58 more—traveled at the 10-cent fare. There is 2½ cents they had no interest in whatsoever.

On the next day, on the 6th of August, the difference is even greater: 1,220 passengers paid 7½ cents, and 1,304 paid the 10-cent fare.

I might add that in the questionnaires which the War Department put into this record, an examination showed that a great many of the passengers in there had replied that they had no interest whatsoever in group riding, and that they preferred to pay a fare on the public transportation companies rather than ride in a private automobile.

There is a further very serious question to these Respondents here, may the Commission please. We are in the midst, unquestionably, of a most abnormal condition—of most abnormal conditions.

First, we have a rising cycle of prices and I am speaking from the record now. Everything is going up, and we have an inpermanent condition of patronage.

When the share-riding plan and the restrictions as to
1368 gasoline were first put on, the traffic of the Arlington and Fairfax jumped between 50 and 60 percent, overnight, like that [snapping fingers].

Now, if gasoline should become available again, and let us pray that it will!—and the users of private automobiles can again get gasoline, the President of the Arlington and Fairfax has estimated that his traffic will promptly be reduced by some 40 percent.

The War Department has initiated and maintained ever since a campaign for group riding, notwithstanding that a great many of their employees do not care to do it, and they have literally huge parking lots over there for the automobiles of their employees. They are not looking forward in the future to the welfare of these Respondents; they do not care about these Respondents. They would like to get them to come over there in private automobiles, use the fields, and they will, when they get the gasoline and tires, and our traffic is going to go right down to where it was before.

And that brings up another thing, particularly in the case of the Arlington and Fairfax. If we are going to look at such figures as those, the Commission in all fairness should look to the history of the Arlington and Fairfax and its predecessor, the Railroad Company, which came into being by Act of Congress in 1894.

In 1928—or 1932, I believe it was—they were thrown
1369 out of the terminal in Washington.

In 1937 they went bankrupt and were succeeded by the Auto Railer Company, and the Auto Railer Company promptly went bankrupt in 1939.

Now we have this company. The general officers of the Arlington and Fairfax drew no salaries for some eight years. They worked without salaries and only in the last two years, I think, has the President of the Arlington and Fairfax drawn a salary and the War Department expert has testified that his salary is on a fair basis measured by the standards of a company of like size.

Now, that is the company that is to have its revenue very radically reduced under the theory of the War Department, and they say, if you please, if conditions should get worse, then the Commission can put the fares back up again.

Well, I would like to have a picture of the War Department agreeing to those fares being put back up again, and I would also like to have a picture of the Commission's being able to do it very promptly. It is always a difficult matter, and we would find ourselves with lower fares and sharply reduced revenue.

Now, may the Commission please, there is just one point that I think Colonel White stated, quite unintentionally. He said that the only one of the Respondents which joined with the Virginia Commission in this challenge to the jurisdiction
1370 of the Commission under Section 203 (b) (8) was the Arlington and Fairfax. That is not altogether correct.

The W. B. & M., which is not represented here today, also joined in that motion. It is our contention on that score—Does that mean that I have five minutes?

Chrmn. ALLDREDGE. Well, you have about four.

Mr. HILL. It is our contention, may the Commission please, I will not have time to argue the question very thoroughly—it is covered thoroughly, I think, in my brief, that the exemption of Section 203 (b) (8), requires that a passenger carrier—I will go back and read the language exactly:

"* * * provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *"

Now, we maintain that a proper interpretation of that language destroys any jurisdiction of the Commission. I think the facts have all been stated to you that Arlington and Fairfax does have some intrastate rights within the District, that is, between the entrance to the Golf Course and the Highway Bridge, on
1371 the one hand, and all other points on its local line in the District, on the other hand. It has no intrastate rights on the Constitution Avenue Line.

Incidentally, the intrastate rights are at a 10-cent fare prescribed by the Public Utilities Commission of the District.

We argue that the meaning to be given the language which I have read, the emphasis to be placed on that language, falls on the "lawfully engaged in accordance with the laws of each State having jurisdiction."

We maintain that it does not mean that you must haul intrastate passengers over every inch of your line, either in Virginia or in the District.

In Virginia we do. We argue that that makes no difference.

What happens if you put that meaning on it, once the doors of the Arlington and Fairfax, let us say, for a couple of hundred yards at the end of their line by the Highway Bridge 203 (b) (8) is out, there is no exemption upon the transportation for those 200 yards, and let them haul intrastate passengers over the entire length of a route.

There was enforcement by State Commissions before this Act was passed. That must have been known to the Congress, Congress used the word in this restriction and it must have meant that. It can't have meant that we would have to drop a passenger literally at every street corner or pick one up
1372 literally at every street corner in order that the exemption might come into play.

That exemption is not geographical, not physical. It means do you have two State Commissions with jurisdiction over whatever intrastate traffic that line may haul in two jurisdictions.

Now, granting that the Commission found otherwise in the Schwerling case, I do not know whether that point was argued or labored very much before the Commission, but we do find support for what we say in the debates in Congress.

Senator Wheeler explained Section 203 (b) (8), and we think explained it very well, and he has shown that the purpose of it was to avoid duplication of jurisdiction. We have adequate jurisdiction here in the District Public Utilities Commission. We acquiesce in that jurisdiction. We have shown that we do not haul intrastate passengers. We attempt to qualify with the Interstate Commerce Commission and the Corporation Commission, and if there is any question of jurisdiction of the Virginia Commission, we are not going to flaunt it.

The whole thing lies in the language, and we have two States with proper regulatory laws and so, they being observed by the carrier, if you have those two things, then the exemption comes into play and this Commission has no jurisdiction.

1373 I thank you.

Chrmn. Alldredge. Lt. Matthews?

Reply argument of Lt. E. A. Matthews

Lt. MATTHEWS. If the Commission please, first I might cover a couple of points that the Commissioners asked Mr. Prettyman some questions about.

One is the question regarding the operation of the Capital Transit to the District Line.

There wasn't anything in the record about that exact thing, but Mr. Merrill, the President of the Capital Transit Company, did testify that at one time the company considered operating to either the Virginia or the District Line at the bridge on the theory that either end would be within the District for the District fare, and the reason that that was not done was that the Virginia companies were believed to furnish adequate service for the traffic and they just did not do it.

The other is the distance from the District Line to the Pentagon Building.

Mr. Locke, Engineer of the Capital Transit Company, testified the distance from the Virginia side of the river to the terminals of the Capital Transit in the District, and subtracting those distances from the over-all distance of the route, means that on the
Capital Transit R–2 Route, the travel is 1.88 miles from the
1374 side of the river, and from the other, the Q–2 Route is
42/100 of a mile, a little less than half a mile.

I might point out that the argument which was made by Mr. Prettyman regarding the fact that no objection was made to the fare instituted. Besides the situation being such that there is no particular way in which that can be done effectively, the sole result has been that these companies made more money than they should have all this time and that hardly raises any estoppal against the Government if it were the kind of proceeding where the question could be raised.

I do not see how anybody can say that they are hurt when the certain result is that they pay too high a fare and have made more money than ever before.

Now, there was some question raised about Exhibit No. 12, whether it shows that the distances are the same.

As I pointed out this morning, the fact is that the average distances from points within the District to Army and Navy installations here, and from those same points to the Annex Building, is almost the same.

In the case of the Pentagon Building, the difference is 4/10 of a mile, and that is the average, mind you; that is not taking just one point and saying it is further from here to there. That is the average of those distances, taking the whole thing.

The point was made that political boundaries customarily set the fare for urban political—for urban blanket fares.

Now, from my examination, I do not believe that that conclusion appears anywhere in the record. In fact, the only evidence that I know of its testimony by various of the witnesses that when there are cases of mass travel beyond political boundaries, they are included for fare purposes, and I submit that that is parallel to this situation where we have 40,000 people traveling from the district to these buildings to work every day.

Some of these other points are mentioned in our brief. For instance, Mr. Prettyman says that Mr. Taylor did not consider the counterflow.

Mr. Taylor certainly did when he testified on the stand at length how he did that. The pages at which that testimony appears are noted in our reply brief.

The Blanning Report was not, I think, made in the light of all of the information that is available to the Commission here. That was a study made with limited information and the conclusions reached are not necessarily the conclusions which would be reached after studying the record here and I think the record here shows that a 13½-cent fare is too high.

The suggestion was made—I do not know whether it is very important or not, but the suggestion was made that the employees do not take advantage of the cheapest fare available.

The 7½-cent ticket was mentioned.

Now, the record shows that it is very difficult to buy the 7½-cent fare books. It is only sold for a very limited period of time and there is a great deal of complaint over difficulty to get in to the small room and the time and the effort it takes to make the purchase, and that is the only record that there is in this case regarding that.

Another thing, there is no mention made of the fact that there happen to be casual riders who cannot afford to buy blocks all together, or a large number of tickets.

Chrmn. ALLDREDGE. How many tickets in those books? 26?

Lt. MATHEWS. 26 I believe. And the fact that some of the people who answered the questionnaire said that they were not interested in group riding does not mean anything because unless the circumstances are very definite, for instance, I am not interested in group riding because I go at different times every day; and you have to have all your plans fit with the man who is doing the driving, and you just can't do that in all cases.

Now, the record, I think, is fairly clear, but mention was made of the fact that in that, not very many comments appeared in the

questionnaire, Exhibit No. 33, this little green paper, regarding the fare.

No request was made for comments on fares. The request
1377 was for comments on bus service.

Fortunately, the Army and Navy employees were able to read English, and they gave just what was asked for. The questionnaire is obviously based upon the preconceived notion that fares were too high and it was not necessary to ask for an opinion as to whether they were.

As far as the jurisdictional point is concerned, I think that the answer is that the only way you can attack the jurisdiction under Subdivision (8) has been admitted to include the plain language of the Subdivision where it says "the entire length." As long as those words are there, the arguments that have been made just do not apply.

And on this question of fares with the streetcars, I think that the Commission has in mind that that is not really a very substantial problem, and the right, clear right to provide joint fares to the buses will take care of the matter.

However, I might mention the fact that the travel here involved between buses and streetcars is so involved that it is inseparable.

Passengers may ride on the same trip on a bus and street car and back to bus again, or they may ride any other combination of them, and one time will ride a bus and another time the streetcar. It is
just not separable, and the rule is, I think, very clearly estab-
1378 lished in regard to transportation that when a question of jurisdiction arises involving two things which are interwoven and inseparable and over one of which it has jurisdiction, that jurisdiction applies to the other thing.

Now, as far as the Interstate Commerce Commission is concerned, this general question has arisen most often in connection with intrastate commerce, and may recall to you that at one time the Interstate Commerce Act expressly prohibited any exercise of jurisdiction over traffic entirely within a State.

Now, despite that statutory provision of exercise of jurisdiction, the Commission, in the first instance, and the Supreme Court affirming the Commission, repeatedly held that there was jurisdiction to control the whole thing when interstate commerce and intrastate commerce was interwoven.

This rule was laid down as early as 1912 in The Minnesota Rate Cases, 230 U. S. 352, and at page 399 the Supreme Court in that case said that "power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter".

You are familiar with the Shreveport case, 234, U. S. 342, Wisconsin Railroad Commission against the C. B. & Q. R. R. Co., 257 U. S. 588, in which the Court said:

"It is objected here, as it was in the Shreveport
1379 case, that orders of the Commission which raise the intrastate rates to a level of the interstate structure violate the specific proviso of the original Interstate Commerce Act repeated in the amending Acts that the Commission is not to regulate traffic wholly within a State. To this the same answer must be made as was made in the Shreveport case, that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce necessary to its efficiency."

Now, this principle is one of general application in our jurisprudence and is not limited to the jurisdiction of the Interstate Commerce Commission.

The same principel has been applied elsewhere. In Currin vs. Wallace, 306 U. S. 1, the same rule was applied to the jurisdiction over tobacco under the Tobacco Inspection Act.

The same rule was applied when the question was the jurisdiction of the Secretary of Agriculture over milk under the Agricultural Marketing Agreement Act of 1937, in U. S. vs. Rock Royal Co-op. 307 U. S. 533.

And in all these cases where there has been any intermingling of a matter over which there is jurisdiction, and a matter over which there is none, there is jurisdiction over the whole, and all these cases presumably stand for the proposition that if
1380 there is any discrimination created by regulation of one kind of traffic, it can be eliminated incidental to the jurisdiction.

Mr. QUIRK. Mr. Chairman, I did not know that counsel was going to raise that question, but I do not need to argue it.

If you will look at the proviso in Section 216, the Congress deliberately said that this Commission could not exercise the kind of power that he is arguing here, that Congress has the power to do it if they want to do it, and the point is that the Congress said that this Commission could not regulate intrastate fares with respect to the matter of discrimination as you can do with respect to the railroads.

Capt. DAVIS. If it please the Commission, I believe I have one minute left, and I would just like to say that I haven't time to answer all the points which have been raised and we believe they are sufficiently covered in our briefs, and we urge the Commission to study the briefs most carefully, and we believe that the Commission will reach the result which the War Department and the Navy Department have asked for.

Chrmn. ALLDREDGE. This proceeding will stand submitted, and the Commission will adjourn and take it under advisement.

(Whereupon, at 2:35 o'clock p. m., oral argument in the above-entitled matter was concluded.)

1382 At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3rd day of July, A. D. 1943

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

The Commission having under consideration the fares for passenger transportation between points specified in the next succeeding paragraph:

Order

It is ordered, That an investigation be, and it is hereby instituted into and concerning the reasonableness and lawfulness otherwise of the fares of respondents named in the next succeeding paragraph for the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand, with a view to making such findings in the premises and prescribing such just, reasonable, and otherwise lawful local and joint fares as are within the powers of the Commission under the Interstate Commerce Act and as the facts and circumstances shall appear to warrant.

It is further ordered, That the following carriers be, and they are hereby, made respondents herein:

Capital Transit Company,
Washington, Virginia and Maryland Coach Company, Inc.,
Arlington and Fairfax Motor Transportation Company,
Alexandria, Barcroft & Washington Transit Company.

It is further ordered, That a copy of this order be served upon each of said respondents and that notice of this proceeding be given to the public by posting a copy of this order in the office of the Secretary of the Commission.

And it is further ordered, That this proceeding be assigned for hearing at a time and place hereafter to be named.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary*.

1390 Before the Interstate Commerce Commission

No. 28991

PASSENGER FARES BETWEEN THE DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Petition in behalf of Arlington & Fairfax Motor Transportation Company, Respondent, for reconsideration and for postponement of the effectiveness of the Commission's order of January 18, 1944, pending disposition of the matter

Filed Feb. 9, 1944

1391 Now comes the Arlington & Fairfax Motor Transportation Company, one of the respondents[1] in the above-entitled proceeding, and files this, its, petition for reconsideration of the Commission's decision of January 18, 1944 (served January 25, 1944), and for postponement of the effectiveness of the Commission's order of January 18, 1944, pending disposition of the matter. In support thereof it respectfully says:

OPENING STATEMENT

So well known to the Commission are the facts in this proceeding that little could be gained by repeating them here in detail. Suffice it to say that this is an investigation instituted by the Commission, at the request of the Secretary of War, into
1392 the reasonableness and lawfulness otherwise of the fares of the four named respondents for the transportation of passengers between all points in the District of Columbia, on the one hand, and, on the other hand, the Virginia installations commonly known as the Pentagon, Navy Annex, Army Annex, and Airport, respectively and intermediate points. Following hearings ending in the late summer of 1943, the filing of briefs and reply briefs, and oral argument, the entire Commission, by its report of January 18, 1944 (served January 25, 1944), to which are appended the concurring expressions of Commissioners Porter, Mahaffie, and Splawn, the partial dissent of Commissioner Johnson, and the dissenting expression of Chairman Patterson and Commissioner Miller, handed down its findings, which we quote below for convenient reference:

[1] Respondents are the Capital Transit Company, the Washington, Virginia and Maryland Coach Company, Inc., the Alexandria, Barcroft & Washington Transit Company, and the Arlington & Fairfax Motor Transportation Company, hereinafter called the Transit Company, the Coach Company, the Alexandria Line, and the Arlington Line, respectively. The three last named will be referred to collectively as the Virginia lines.

"Section 216 (e) of the act authorizes us to require the establishment of through routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia Lines are necessary and desirable in the public interest.

"We further find that the bus fares and the bus-streetcar fares of the Capital Transit Company in issue are unreasonable in those instances where, and to the extent that, they exceed the fares now maintained within the District of Columbia, which latter fares, including all transfer privileges, we find to be reasonable for application to and from the Pentagon building and intermediate points. All fares of the Capital Transit Company in issue which are less than the approved fares may be increased to the latter basis.

"We further find that the local fares of the Arlington and Fairfax Motor Transportation Company, Alexandria, Barcroft & Washington Transit Company, and Washington, Virginia and Maryland Coach Company, Inc., between the respective Virginia installations and the terminals of those companies in the District of Columbia, and intermediate points, are unreasonable to the extent that they exceed a fare of three tokens for 25 cents, equal to 8⅓ cents per one-way trip, provided, however, that the present cash fare of 10 cents per single trip may be continued. The local fare of 7.5 cents of the Alexandria, Barcroft & Washington Transit Company between the Army Air Force Annex and the District terminal of that company may be increased to the basis herein approved.

"We further find that the combination bus and bus-streetcar fares for multiple trips of the Capital Transit Company and the Virginia Lines, above mentioned, between the Virginia
1393 installation and points in the District of Columbia and intermediate points, are unreasonable to the extent that they exceed a fare of $1.60, valid for 12 one-way trips, equal to 13⅓ cents per one-way trip, which fare, including transfer privileges on the lines of the Capital Transit Company, we find to be reasonable for the joint service indicated. The approved fare may be evidenced in the form of tokens or ticket book valid for 60 days or both.

"Except as stated in the foregoing findings, we find that the fares in issue are not unreasonable or otherwise unlawful. In view of the existing emergency, we find that the fares found reasonable should be made effective as soon as practicable. The order will therefore provide for not less than 15 days' notice instead of the usual 30-day period. An appropriate order will be entered."

Toward those findings, which are based, we sincerely believe, on a complete misapprehension of the law and an improper application of that law to the facts at hand, this petition is respectfully directed.

THE COMMISSION ERRED IN FAILING TO FIND THAT SECTION 203 (B) (8) DEPRIVES IT OF ANY JURISDICTION WHATSOEVER

We turn first to that section of the act, namely, section 203 (b) (8), which in our opinion completely deprives the Commission of jurisdiction over the fares under investigation. That section, to the extent here pertinent, provides as follows:

"* * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, *and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;* * * *" [Italics supplied.]

1394 The facts are clear. Within Virginia the Arlington Line transports passengers in intrastate commerce over the entire length of its lines and is subject, so far as they are concerned, to the jurisdiction of the State Corporation Commission of Virginia. Within the District of Columbia the Arlington Line has been granted limited intrastate rights by the Public Utilities Commission of the District of Columbia and, as stated by the Commission at sheet 7 of its report, does not "engage in intrastate transportation between all points" along its lines in the District. The entire length of the Arlington Line lies within the Washington, D. C., commercial zone fixed in Washington, D. C., Commercial Zone, 3 M. C. C. 243.

As we stated in our opening brief, which we can only believe must have escaped the attention of the Commission, it is a well

settled rule of law that in construing somewhat loosely phrased exemptions, such as that with which we are here dealing, recourse may properly be had to the legislative debates. When what is now Part II of the Interstate Commerce Act was under consideration in the Congress, Senator Wheeler gave the following explanation of this proviso:

"An exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between contiguous municipalities or commercial zones, as between New York City and New Jersey, and also for instance, as between Washington and Alexandria, and other continguous cities *where the transportation is regulated by the local Government themselves.* [Italic supplied.] 79 Cong. Rec. 5650.

"Provision is also made that regulation shall not apply to what may be termed 'intramunicipal' or 'occasional' operations 'unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202.' The first of these two conditional exemptions concerns the transportation of passengers or property in interstate or foreign commerce within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is part of a continuous carriage or shipment to or from a point without
1395 such local area. The Committee has added an outright exemption of the operations of carriers of passengers in such local areas where such carriers of passengers are also lawfully engaged in the intrastate transportation of passengers over the entire length of their interstate route or routes in accordance with the laws of each State having jurisdiction.

"At the present time some are regulated by each State. For instance, as between New York and Jersey City, if they are regulated by the State of New York and by the State of New Jersey, then they are exempt from the provisions of the bill. *But if there is no regulation of their operations in either State*, then the Commission would have the right to regulate them.

"*The purpose of this exemption is to avoid duplication of regulation over bus operations*, such as those conducted by street railways, however, the Commission is authorized to take jurisdiction, where necessary, over busses operated within a municipality or between contiguous municipalities by motor carriers in interstate service *and not so regulated by the States. The absence of such regulation has in some instances created chaotic conditions beyond the control of any State or municipal body.* [Italics supplied.] 79 Cong. Rec. 5651.

Despite this explanation by Senator Wheeler and despite our argument on brief that the explanation and the proviso itself palpably mean that to the extent a carrier of passengers by motor vehicle operates in intrastate carriage within a commercial zone it must operate in strict compliance with the laws of each State having jurisdiction, the Commission makes the following statement at sheet 7:

"As to the Transit Company and the Coach Company there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction."

We earnestly urge that here the Commission erred by lending weight only to those considerations which do not merit it. If the proviso is to be correctly interpreted, the emphasis must fall upon the language, "lawfully engaged in the intrastate transportation of passengers * * * in accordance with the laws of each State having jurisdiction." Where the Commission 1396 has gone astray is in lending principal emphasis to the phrase, "over the entire length of such interstate route or routes." That phrase, to be weighed and judged by the context, can only bean here that the question to be decided is whether the operations of these respondents within the Washington commercial zone are lawfully conducted under the laws of Virginia and the District. Since there is not even an intimation that there is any unlawfulness in this regard, it becomes immediately apparent that the Commission erred in giving a national significance to this purely *local* carriage in mass, short-haul transportation.

It is immaterial, of course, that the Transit Company and the Alexandria Line raised no issue in respect to section 203 (b) (8), for it has long been settled that such jurisdictional defense cannot be waived by the parties.

THE FINDING THAT THE APPLICATION OF THE ACT TO THE AFOREMENTIONED TRANSPORTATION IS NECESSARY TO CARRY OUT THE NATIONAL TRANSPORTATION POLICY DEPRIVES RESPONDENTS OF A FAIR HEARING

Immediately following the Commission's statement on sheet 7 that "it is reasonably clear that their fares [those of the Arlington and Alexandria Lines] between the Virginia installations and the District are subject to our jurisdiction," the Commission goes on to say:

"In any event, we are of the opinion and find that application of the Act to that transportation is, in the language of section 203 (b) (7a) [sic], necessary to carry out the national transportation policy."

Here, quite obviously, the Commisison has gone far beyond any issue presented by this investigation and, without one word of evidence on the subject, has made an unwarranted finding for no other purpose than to bolster its previous finding. Nowhere in
1397 the Commission's order of July 3, 1943, instituting this investigation will there be found even a hint that there was any issue concerning the necessity for applying the act generally to the transportation in question in order to carry out the national transportation policy; to the contrary, the investigation was specifically restricted to the "reasonableness and lawfulness otherwise of the fares of respondents." No respondent was put on notice that evidence might be introduced on the subject of the general application of the act—and, indeed, if we had attempted, notwithstanding the plain terms of the order, to introduce such evidence, it seems manifest that it would have been excluded by the presiding Commissioner. Such evidence would be relevant and material only in an investigation inaugurated for the sole purpose of determining the question of the necessity for such application of the general provisions of the Act to this local transportation or in a further hearing assigned in Washington, D. C., Commercial Zone, supra. Thus, we submit, respondents have been deprived of their day in court.

In closing, we might add, it is utterly inconceivable that short-haul, mass transportation of the sort now before us could require the application of the general provisions of Part II of the act in order, in the language of section 203 (b), "to carry out the national transportation policy declared in this Act." We believe that if the Commission will but search its mind for some single circumstance of this transportation which has a national import, it will find itself compelled in all fairness to concede that it can find no such circumstance and that its finding toward which this chapter of our petition is directed is no more than a generality without real meaning and without factual support—either in this record or out of it.

The Commission Has Misconstrued Section 216 so far as Concerns Joint Fares With Local Facilities

At sheet 14 the Commission asserts that "Section 216 (e) of the act authorizes us to require the establishment of through
1398 routes and joint fares whenever deemed by us to be necessary or desirable in the public interest." The abrupt con-

struction of the law is wholly erroneous. Section 216 (e) can be properly construed only if we look to the remainder of the act. Just as we urged in our opening brief, section 216 (a) provides that "It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers," and the Commission may not, merely by attempting to employ section 216 (e) as a vehicle, require these respondents to establish through routes which it is not their duty to establish themselves. The duly which section 216 (a) casts upon respondents is the establishment of through routes, not with all motor carriers of passengers, but only with other such carriers.

In the interest of brevity we shall not engage in a protracted discussion of this question. Instead, we ask that the Commission accept as a part of the instant petition pages 17 to 20, inclusive, of our brief of October 25, 1943, wherein we pointed out the numerous circumstances which make the Virginia lines quite unlike the Transit Company in their basic characteristics. There is no obligation on these respondents to establish through routes and joint fares with unlike motor carriers, and the Commission may not enlarge its powers so as to force that obligation upon them.

The Commission should have found that section 216 (a) leaves it without authority to require that through routes and joint fares be put into effect between the Transit Company and the Virginia lines. Its failure so to find it legally arbitrary and capricious, and we respectfully ask that it now correct its previous error in this regard.

There Are No Through Routes in Conjunction With the Virginia Lines Over Which Joint Fares May Be Fixed

Perhaps the most perplexing statement appearing in the the Commission's report is the following at sheet 14:

1399 "Through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia lines are necessary and desirable in the public interest."

We are completely at a loss to understand this assertion and finding. Nowhere in the record will there be found even an intimation that the Virginia lines maintain through routes with the Transit Company. It is of interest, indeed, that so far as the R-2 route is concerned, the Transit Company does not even maintain a through route of its own. In only one instance, the Q-2 line, is there a through route, and that particular route is operated wholly by the Transit Company. If what the Commission says here were true, then these Virginia lines would be participants

in through routes with every railroad and motor carrier of passengers in the United States. And so would the Transit Company. Who can believe that these Virginia lines are parties to through routes with the Transit Company, then with a chain of railroads spanning the continent, and finally with a traction company in San Francisco, Calif., let us say? The very statement of the proposition demonstrates its absurdity.

The Commission's statement that through routes are now in effect can be predicated on no more than the fact that the streets over which the Virginia lines operate intersect streets over which the Transit Company operates, for it is undisputed that between the Virginia lines and the Transit Company there is no arrangement whatsoever, express or implied, for continuous carriage of passengers. But is has long been settled that a through route is just such an arrangement. There must be some concert of action. St. Louis S. W. Ry. Co. v. United States, 245 U. S. 136. Here there is none.

It is equally well settled that the question whether a through route exists is to be answered by reference to all the incidents and circumstances of shipment of goods or carriage of passengers. Through Routes and Through Rates, 12 I. C. C. 163; The Ogden Gateway Case, 35 I. C. C. 131. The Commission
1400 will search in vain for any incident or circumstance here which evidences any arrangement between respondents. It is wholly immaterial that passengers may quit the bus of the Transit Company and subsequently board a bus of one of the Virginia lines, for this is not done by virtue of any arrangement between the companies. The fares paid on each line are precisely the same as if the passenger had never ridden on any other line. Evidence of a previous ride by way of the Transit Company, for example, means nothing to the Virginia lines, which would disregard such evidence even if the passenger attempted to produce it and would collect their own local fares. At no point may a passenger board a bus of one of the Virginia companies and purchase through transportation by way of that company and the Transit Company, or vice versa. Differently stated, he may not enter into a contract with the first line which he patronizes (one of the Virginia lines, for instance) that it and the Transit Company will transport him to whatever may be his ultimate destination in the District or beyond. But an indispensable element to a through route is the right of the passenger to contract for such through carriage. Alleged Unlawful Rates and Practices, 7 I. C. C. 240. It is significant that if the local fares of the Virginia lines were to be increased at a given midnight, a passenger who boarded a Transit Company bus just before midnight and changed

from that bus to the bus of one of the Virginia lines just after midnight would have to pay the increased fare; if a through route actually existed he would be entitled to travel in the bus of the Virginia lines at the lower fare in effect when he boarded the bus of the Transit Company.

For reasons which we have already set forth, the Commission lacks authority to prescribe through routes between the Virginia lines and the Transit Company. Neither can it clothe
1401 itself with power to prescribe joint fares by merely indulging in the unsupported observation that through routes already exist.

EVEN IF THROUGH ROUTES EXISTED, THE COMMISSION HAS DRASTICALLY OVERSTEPPED THE LIMITS OF ITS AUTHORITY IN PRESCRIBING JOINT FARES IN CONJUNCTION WITH A STREETCAR SERVICE

In prescribing joint fares for use on the busses of the Virginia lines and Transit Company the Commission has gone far beyond any powers vested in it by the act, but, not resting with this arrogation of authority, it even goes so far as to fix corresponding joint fares for application "to the combined bus-streetcar operations of the Transit Company and to those operations and the bus operations of the Virginia Lines." The reasoning by which it arrives at this conclusion is curious. First it seems to proceed on the theory that because section 216 (e) contains no exception in favor of street electric passenger railways, such as is contained in sections 15 (3) and 307 (d), it is free to prescribe through routes and joint fares between bus companies and street electric passenger railways, quite overlooking that, so far as any type of carrier by railway, by express, or by water is concerned, section 216 (e) permits it to prescribe joint fares only in those instances in which the motor carrier of passengers has already joined in through routes with these other types of carriers and that a reservation in respect of street electric passenger railways would accordingly be altogether tautological, and quite overlooking also that section 216 (e) authorizes it to prescribe through routes in the case *only* of "transportation of passengers by common carriers by motor vehicle."

Apparently recognizing tacitly, however, that there is no basis for its assumption of authority to prescribe through routes and joint fares between bus companies and a street electric passenger railway, the Commission next attempts to find that the
1402 Transit Company is not a street electric passenger railway because, it asserts, the streetcar and bus operations of

that company are commingled. Here it cites Wisconsin Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, a decision which has no bearing at all on the instant case.

First be it noted that in no sense of the word is there a commingling of the streetcar and bus operations of the Transit Company. They are totally separate and distinct. But even if they were not, the case cited would not be in point, for it has to do with the power specifically entrusted to the Commission to require that intrastate fares made or imposed by any State be increased if it finds in an appropriate proceeding that "any such * * * fare * * * causes * * * any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful." There, may the Commission please, was a proceeding having to do with powers specifically and unqualifiedly granted to the Commission; here is a proceeding in which the Commission, by forced and strained analogy, literally usurps powers which the Congress has intentionally withheld from it. This, we respectfully submit, it cannot do.

No Valid Findings Can Be Based on Abnormal Conditions

Although at sheet 11 the Commission recognized that the conditions under which these respondents are operating are abnormal; particularly as respects the probability of sharply reduced traffic with the lifting of the restrictions on the use of private automobiles [2] and to the probable heavy increases in labor costs by reason of the proceedings pending before the War Labor Board, at sheet 13 it minimizes these conditions by asserting that it "cannot anticipate radically increased costs or falling off of
1403 traffic or other abrupt and decided changes." The Commission will take official notice that since the conclusion of the hearings in this proceeding the possible increased labor costs about which evidence was introduced have become a reality and that the operating costs of the Virginia lines have been heavily increased. Thus, although the Commission spoke of the necessity of predicating its decision "upon the facts and circumstances presently known," it quite obviously did not so predicate its decision, but based it on conditions which had already changed radically for the worse from the standpoint of these Virginia lines. See Atchison, T. & S. F. R. Co. v. United States, 284 U. S. 248, wherein the Court refused to sustain a finding of the Commission which was based on a stale record. Nor can it be over-

[2] At page 33 of our brief of October 25, 1943, we pointed out that traffic was gradually decreasing.

looked that the circumstances in this regard are aggravated by the years of famine through which the Arlington Line struggled, years during which no salary was drawn by the Arlington Line's president or any other general officer.

Findings Based on the Supposedly Low Salaries of the Favored Employees at the Virginia Installations Are Arbitrary and Capricious

We have searched without success for any precedent for the following statement of the Commission at page 13 of its report:

"The persons using this service, like others who utilize public vehicles, are, for the most part, in a relatively low income class. The record warrants the conclusion that the existing charges are higher than they should reasonably be called upon to bear. It is elementary that value of the service, ability to pay, or what the traffic will bear, is an element properly entering into the fixation of reasonable transportation charges. We know of no reason why that principle is not applicable here."

We quite agree that "value of the service, ability to pay, or what the traffic will bear, is an element properly entering into the fixation of reasonable transportation charges," but we know of no case in which rates or fares have been reduced because of
1404 the inability of a favored percentage or class of passengers to bear higher fares or because a portion of the freight traffic could not bear higher freight rates. Heretofore the Commission has confined its prescription of reduced freight rates, for example, to those instances in which all the traffic under consideration could not bear the higher rates. Never to our knowledge has it reduced rates on several classes of traffic because one of the classes could not bear the higher rates. Yet the latter is exactly what the Commission has done here. Far from adhering to the principle announced in the above-quoted portion of its report, it has done violence to it.

We do not concede for a moment that the measure of these fares is a matter of towering importance to the so-called low-paid employees at the Virginia installations (the fares were in effect for many years prior to the higher levels of salaries now paid at these installations)—and most assuredly the record is devoid of any evidence of their inability to bear the fares—but if, arguendo, we should concede this to be true, we find ourselves faced immediately with the fact that the reduced fares would not be restricted to the lower-paid employees. Under the Commission's finding they would be open to higher-paid and lower-paid alike. To be consistent, the Commission should find that if the employee is in

a low-salaried group he should pay a low fare, and that then the fares should be graduated upward as the ability of the employee to bear the expense increases. That is what it does with freight rates, and it agrees that there is no difference in principle. It is of some interest that the War Department's consultant, the president of a transit company, upon whose testimony the Commission commented at sheet 9 of its report, conceded that he had most certainly made no effort to base his own fares on the varying capacity of his patrons to pay.

1405 THE COMMISSION HAS NO AUTHORITY TO REQUIRE THE ESTABLISHMENT OF COMMUTATION FARES; AND PARTICULARLY SO WHERE THE FARE IS FOR AN UNCERTAIN SERVICE IN AN UNCERTAIN AMOUNT

Since in his dissenting expression Chairman Patterson has lucidly set forth that the Commission, in requiring the establishment of the token basis for local passage over the Virginia lines and reduced-fare books of commutation tickets for through passage, has exceeded its authority, it will not be our purpose to do more than express our agreement with all he says and to urge upon the Commission that it recognize its error, but we do wish to touch upon another phase of the same general subject which Commissioner Patterson did not specifically treat. We have in mind the requirement that the weekly pass in use on the lines of the Transit Company within the District be established for use to and from the Pentagon. Here the Commission has not only required a commutation fare—the issuance of which is specifically left to the discretion of the carriers by the provisions of sections 22 and 17 (b), but it has required a commutation fare in an indefinite amount and for an indefinite use. In other words, it has found that the use of intrastate ticket must be extended in interstate commerce over the Transit Company's lines to the Pentagon but has placed no restriction whatsoever on its concurrent use for intrastate passage. Clearly then, with each use of the weekly pass for rides within the District, the amount paid for the interstate travel to and from the Pentagon becomes less, with the result that the Commission, to all intents and purposes, has prescribed a variable rather than a constant figure; and, indeed, it could be equally well argued that it has prescribed no fare at all for the Pentagon service. We seriously question whether the Commission is within its rights in demanding that an intrastate commutation basis be continued as such for an indeterminate number of intrastate trips and that at the same time it be extended to an indeterminate number of interstate trips.

1406 Bluntly stated, the Commission first violates the law by requiring a commutation fare where none previously existed and then does further violence to the law by fixing the fare in a sum uncertain.

The Commission Should Have Categorically Rejected Any Evidence Based on Returns to Questionnaires

At intervals throughout its report the Commission has referred to supposed facts which could only have been taken from the returns to questionnaires, and at sheet 8 it specifically mentions and accepts such returns. Exhibits 13, 15, 17–20, 25–32, and 104 are based wholly or in part upon those returns. Respondents objected to the receipt in evidence of each of these exhibits and to any testimony based thereon. The objections were based on the ground that this was hearsay and that respondents were afforded no opportunity for cross-examination of those who purportedly completed the returns to the questionnaires. All are inadmissible under an unbroken line of precedents. Not only are they inadmissible, but, as will be seen from pages 41 and 42 of our brief of October 25, 1943, examination of a very limited number of the returns showed errors which must have permeated the entire mass. The Commission clearly erred in accepting at face value the exhibits and oral evidence founded on these faulty instruments. It should reopen the case and definitely reject each and every exhibit having these returns as its foundation and all evidence based thereupon.

The Commission Has Accorded Respondents Insufficient Time Within Which to Exhaust Their Administrative Remedies and Effect Compliance With the Order

The Commission's report and order were served on January 25, 1944. Under rule 101 (e) of the Commission's Rules of Practice we should be afforded sixty days from that date within which to seek a reopening. But it will be seen that the order re-
1407 quires that the prescribed fares be established on or before March 13, 1944, upon not less than fifteen days' filing and posting, which means, of course, that the tariffs would have to be filed and posted no later than February 27, 1944. Obviously, within the time set it would be quite impossible for the Virginia lines to exhaust their administrative remedies and thereafter effect compliance with the Commission's order, and we believe that the Commission will agree that in a case such as this, decided by a bare majority, respondents should not be put to the heavy expense which such compliance would mean until those

remedies have in fact been exhausted. A huge quantity of tokens would have to be ordered and obtained, books containing tickets valid for twelve one-way trips would have to be ordered and obtained, arrangements for division of the joint revenue would have to be completed, new accounting methods would have to be devised, changes would have to be made in the companies' fare boxes, and the operators of the busses would have to be trained in these new methods for fare-box or manual collection of the fares—an almost herculean task in the presently allotted time.

For all the foregoing reasons we ask that the effective date of the Commission's order of January 18, 1944, be indefinitely postponed pending study of this petition, and we ask, too, that if by some ill chance the Commission should thereafter deny our petition, the effective date of the order be set sufficiently in advance to enable the Virginia lines to effect timely compliance with it or to take the further remedial steps contemplated by the act.

PRAYER

Wherefore, this respondent prays that the Commission postpone the effectiveness of the order of January 18, 1944, pending disposition of the matter, reconsider the case in response to
1408 this petition, and either (1) discontinue the proceeding for lack of jurisdiction or (2) find that the fares under investigation are not unreasonable or otherwise unlawful and discontinue the investigation.

Respectfully submitted.

ARLINGTON & FAIRFAX MOTOR TRANSPORTATION COMPANY,
Respondent.

(Signed) By FRANKLIN K. LANE,
822 Southern Building, Washington, D. C.,
and

(Signed) WILMER A. HILL,
238–241 Transportation Building, Washington, D. C.,
Its attorneys.

Of Counsel:
AMES, HILL & AMES,
Transportation Building, Washington, D. C.

Dated at 238–241 Transportation Building, Washington (6), D. C., February 9, 1944.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing petition upon all parties of record in this proceeding, by mailing by

first-class mail a copy thereof properly addressed to each other party.

Dated at Washington (6), D. C., this ninth day of February 1944.

(Signed) WILMER A. HILL.

1444 Before the Interstate Commerce Commission

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Petition of Respondent, Alexandria, Barcroft and Washington Transit Company, for reconsideration, reargument, modification, and suspension of order

(Filed Feb. 9, 1944)

1445 Comes now respondent, Alexandria, Barcroft and Washington Transit Company, hereinafter called the A. B. & W., and files this its petition for reconsideration, reargument, and suspension of the order of the Commission in this proceeding of January 18, 1944, and for postponement of the effective date of that order pending reconsideration, and for other reasons, in support of which respondent respectfully shows:

1. The Commission erred in finding that the local fares of the A. B. & W. between the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex, and the Washington National Airport in Virginia and the terminals of respondent in the District of Columbia are unreasonable to the extent that they exceed a fare of three tokens for 25 cents equal to 8⅓ cents per one-way trip, as the evidence of record does not warrant or justify such a finding.

2. The Commission erred in finding that the combination bus and bus-streetcar fares for multiple trips of the Capital Transit Company and the Virginia bus line respondents, including the A. B. & W. between the federal installations in Virginia and points in the District of Columbia and intermediate points are unreasonable to the extent that they exceed a fare of $1.60 valid for 12 one-way trips, equal to 13⅓ cents per one-way trip, which fare, including transfer privileges on the lines of the Capital Transit Company, which the Commission finds to be reasonable for the joint service prescribed.

3. The Commission erred and acted arbitrary and contrary to the evidence in finding that the bus fares and the bus-streetcar

fares of the Capital Transit Company are unreasonable in those instances where, and to the extent that, they exceed the
1446 fares now maintained within the District of Columbia including all transfer privileges, are unreasonable for application by the Capital Transit Company to and from the Pentagon Building and intermediate points.

4. The Commission erred in finding that it cannot anticipate radically increased costs or falling off of traffic or other abrupt and decided changes in the business of the A. B. & W. and the other respondent bus lines, and in basing its decision in this proceeding upon traffic and operating conditions and current revenues of respondent arising from the extraordinary and abnormal situation which exists in Washington and Virginia as the result of the war. In fixing rates for the future, it is not only the right, but the duty, of the Commission to consider such conditions and to anticipate that it is reasonable to assume in the light of these conditions that there will be increased costs, as well as a falling off of traffic or other abrupt changes incidental to changes in the war emergency.

5. The Commission acted arbitrarily and contrary to the law in assuming that through routes exist between the Capital Transit Company and respondent as there is no evidence in the record which shows that there now exists a common arrangement or any arrangement for through carriage of passengers between these respondents.

6. The Commission acted arbitrarily and without authority in prescribing commutation tickets as such. Section 22 of the Interstate Commerce Act permits, but does not require, the issuance of such tickets. *Excursion and Commutation tickets*, 23 I. C. C. 95, and *Commutation Rate Case*, 21 I. C. C. 428.

7. The commutation tickets prescribed by the Commission will create an unfair and discriminatory rate adjustment as between the respondents.

STATEMENT IN SUPPORT OF PETITION

This investiation was instituted by the Commission on its own motion by its order of July 3, 1943, as the result of representations made by the military services that their personnel employed in the federal installations in Virginia already referred to, are required to pay excessive fares for the transportation of passengers between those points and points in the District of Columbia. As we pointed out in our brief, in September 1942, the respondents began a series of conferences with the Washington Regional Committee of the Office of Defense Transportation. This Committee was concerned primarily with ways and means of bringing about

greater utilization of the existing facilities for the transportation of passengers between points in Virginia and the District
1447 of Columbia. The Committee was only incidentally interested in the fares. However, the Committee made it rather clear that greater uniformity in the fares would tend to bring about greater utilization of the bus facilities.

Several suggestions were made by this Committee with respect to the measure of the fares. The first suggestion was that the Capital Transit Company join the Virginia respondents in establishing a one-way 15-cent joint fare. This suggestion was agreed to by the respondents. Practically contemporaneous with that suggestion came the second suggestion that the respondents establish a joint fare of 14⅙ cents per ride, but before that suggestion could be acted on the Regional Committee suggested a joint fare of 13½ cents. With certain reservations, the respondents by letter dated March 9, 1943, Exhibit 59 of the record, agreed to establish such a fare. Meanwhile, through the efforts of Senator Burton of the District Committee of the Senate conferences of the interested parties were held. As the result of these conferences, W. Y. Blanning, Director of the Bureau of Motor Carriers of this Commission, agreed to make a survey. A copy of that survey and the recommendations of Mr. Blanning is part of the record as Exhibit 57. He recommended, among other things, that the respondents establish a joint ticket plan consisting of a book of 12 single trips to be sold at $1.60 per book, which is the equivalent of 13⅓ cents per one-way trip. He also recommended that certain other fares be increased. The War and Navy Departments declined to accept the recommendations of Director Blanning. Thereafter, this investigation was instituted by the Commission.

These negotiations are again referred to because during the course of this proceeding, the A. B. & W. has indicated its willingness voluntarily to establish joint fares with the Capital Transit Company under the conditions described. Among other things, these conditions included the understanding among
1448 the parties to the negotiations that the joint fares to be established would be regarded as temporary. It is one thing for a carrier to be willing voluntarily to establish uniform rates under the conditions described. It is quite another and different thing for that carrier to be required by order to establish a diverse and discriminatory rate adjustment. The order of the Commission here not only requires the Virginia bus line respondents to establish joint fares with the Capital Transit, but also requires the Virginia respondents to reduce their local fares between the federal installations in Virginia and their terminals in the District. In addition, and unlike the compromise, the Com-

mission requires the Capital to establish fares to and from the Pentagon Building five cents lower than the joint fares of the Virginia bus line respondents to and from that building.

Throughout this proceeding counsel for the Secretary of War and the Secretary of Navy insisted that the respondents should be required to adopt the District of Columbia fares, transfer arrangements, tokens, etc., for application between the federal installations in Virginia and all points in the District of Columbia. They predicated this contention on the theory that such a reduction in fares could be made by respondents without depriving them of a fair return on their system operations, which, for the time being, are comparatively good. Evidence in support of that contention was offered by complainants, but was ruled out on the objection of respondents.

On sheet 12 of the mimeographed report of the Commission the statement is made that because of these objections the Commission has not "given consideration to evidence offered by the departments showing respondents' income and rates of return on investment or value." Despite that disclaimer, the statement is made on sheet 13 of the report that the A. B. & W. and the Arling-
1449 ton & Fairfax have reaped a particular important advantage from this traffic which makes for economical and profitable operation.

It is, of course, obvious that whether a particular operation is profitable in the sense that it yields a fair return on fair value involves the consideration of many factors. The reference in the report to the profitable operation of the A. B. & W. and the Arlington & Fairfax appears to be another way of saying that the Commission did consider the very character of evidence which was refused on objection of the respondents, and which the Commission says on sheet 12 has not been considered. At all events, the evidence of record does not warrant the finding that the existing fares of the A. B. & W. between the involved points in Virginia and its terminals in Washington are unreasonable, or that the combination of fares of the A. B. & W. between the points in Virginia and points served by the Capital Transit bus lines in the District of Columbia are unreasonable.

THE COMMISSION EXCEEDED ITS STATUTORY AUTHORITY IN PRESCRIBING JOINT FARES FOR APPLICATION ON THE STREET ELECTRIC RAILROAD OPERATIONS OF CAPITAL TRANSIT COMPANY

By its report and order, the Commission required, inter alia, that the A. B. & W. and other Virginia bus lines establish a joint fare between the federal installations in Virginia and points in the

District for application and use on the street electric railroad lines of the Capital Transit Company, as well as its bus lines. Incidentally, this action was taken on the assumption by the Commission that through routes between the respondents now exist. A through route has been described as an arrangement, express or implied, between connecting carriers for continuous carriage. That arrangement may be manifested in several ways. But, in the absence of a common arrangement of some kind such as a through bill of lading, through rates or through tickets, etc., a through route does not exist. Mere continuity of movement is not enough. United States v. Munson S. S. Co., 283 U. S. 43. The evidence does not show that there exists any arrangement between the Virginia bus lines and the Capital Transit for a continuous carriage of passengers between the points here involved.

Although Part II of the Interstate Commerce Act regulates the rates and other fares of motor carriers of property, as well as of passengers, it sets up several distinctions with respect to passenger carriers and property carriers. Section 216 (a) provides that it shall be the duty of every common carrier of passengers by motor vehicle "* * * to establish reasonable through routes with other such common carriers * * *," and "* * * to establish, observe and enforce just and reasonable individual and joint rates, fares, etc. * * *"; and to issue appropriate tickets and regulations with respect to baggage and "all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce"; and in case of such joint rates * * * to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein * * *".

It will thus be seen that section 216 (a) imposes the duty on motor common carriers of passengers to establish just and reasonable joint rates with each other. Section 216 (e) confers authority on the Commission to enforce obedience to the duty imposed upon common carriers of passengers by section 216 (a). To that end, Section 216 (e) gives the Commission authority to require the establishment of joint fares and through routes "applicable to the transportation of passengers by common carrier by motor vehicle * * *". The authority here granted is limited to joint fares between motor common carriers of passengers. Before it can be exercised, the Commission must find that a wrong forbidden by section 216 (a) has been committed. Interstate Commerce Commission v. L. & N., 227 U. S. 88.

The report of the Commission refers to the Omaha & Council Bluffs Case, 230 U. S. 324, in which the Supreme Court held

1451 that a street electric railroad engaged in interstate commerce is not subject to the Interstate Commerce Act because not comprehended within the meaning of the word "railroad" as used in section 1. The Commission also referred to the limitations on its power to prescribe joint rates and through routes in section 15 (3) of Part I of the act, and section 307 (d) of Part III, and stated that no similar limitation is contained in section 216 (e) of Part II. Apparently the Commission referred to that part of section 15 (3) and section 307 (d) which provides that the authority to establish joint fares and through routes shall not embrace such routes and rates "between street electric passenger railways not engaged in the general business of transporting freight in addition to their passengers and express business, and railroads of a different character." After making these comments the Commission said that the Capital Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. The significance of that finding, coupled with the references to the limitations on its power to prescribe through routes, etc., in section 15 (3) and section 307 (d) is not clear, since the authority granted by section 15 (3) to require the establishment of through routes, etc., is limited to the transportation of passengers or property by carriers "subject to this part," or by carriers by railroads "subject to this part" and common carriers by water subject to Part III. It is therefore clear that irrespective of whether the street electric railroad of the Capital is a "railroad" as that term is used in section 1, or is a street electric railroad not comprehended within that term, the Commission is, nevertheless, without authority to require the establishment of joint fares and through routes between a motor common carrier of passengers for use on the electric railroad operations of the capital irrespective of the status of such operations under the act.

1452 The Commission apparently has based its exercise of the power to require joint fares for application on the street-car lines of the Capital, as well as its bus lines, on the theory that the operations are so commingled and blended as to be inseparable. Incidentally, it should be observed that the evidence in the case does not show that this is true. The Commission then went on to say that the situation is analogous to the relation between intrastate and interstate railroad traffic as to which the Supreme Court in the Wisconsin Passenger Fare Case, 257 U. S. 563, 588, said the effective control of the one class of traffic must embrace some control over the other in view of the blending of both in actual operation. A reading of the opinion of Chief Justice Taft in that case clearly reveals that the court was not called upon to base, and did not in fact base, its decision on the

fact that the intrastate and interstate traffic of the railroads involved were handled on the same trains by the same crews, etc.

The Chief Justice went out of his way to say that the Interstate Commerce Commission was not given authority by section 13 (4) to regulate the intrastate fares as such, but that the authority conferred by that section could not be exercised without the incidental regulation of intrastate commerce. There the Commission had exercised a specific statutory authority to remove unjust discrimination against interstate commerce and against persons and localities, etc. by requiring like treatment in respect to fares applicable to intrastate commerce.

In the selected statement from the Wisconsin case the court dealt with the incidental effects of the exercise by the Commission of an authority specifically conferred by the statute. In the instant case, the Commission has seized upon the so-called commingling doctrine to justify the exercise of an authority that does not exist. Before the commingling doctrine has any
1153 application in any case, there must first exist federal authority to act on the subject matter. The decisions in the Wisconsin and other cases which have referred to that doctrine merely hold that where federal authority exists and the subject matter is commingled and blended in such a manner as to be inseparable, the federal authority may be asserted even though it has an incidental effect upon a subject not otherwise within the control of the federal authority.

Unlike the situation in the Wisconsin case, there is here a total absence of statutory authority on the part of this Commission to require the establishment of joint fares between a motor common carrier of passengers and any other class of carrier, whether it be a street electric railroad, a trunk line railroad, a water carrier or other. Moreover, in the light of the scope of the authority of this Commission under section 3 and section 13 (4) of the Interstate Commerce Act, it is clear that the so-called commingling or blending of traffic statement in the opinion of the court in the Wisconsin case was principally relevant and material because it tended to show similarity of transportation conditions. It is certain that even if there had not been the blending and the commingling of traffic as recited in the court's opinion in that case, the Commission would have had authority to have required the removal of unjust discrimination against interstate commerce. Compare the Shreveport Case 234 U. S. 342.

The power to determine and prescribe joint fares is too great a power ever to be conferred by implication. It must be affirmatively granted before it can be exercised. Interstate Commerce Commission v. C. N. O. & T. P. Ry., 167 U. S. 479.

1454 THE EVIDENCE OF RECORD DOES NOT JUSTIFY THE FINDINGS MADE BY THE COMMISSION

It is difficult to determine from the report of the Commission the precise basis of the finding that the fares in issue are unreasonable. While the Commission states that for the purpose of this proceeding it concludes that the federal installations involved are in Virginia and not in the District of Columbia, other findings of the Commission indicate inferentially that it regards the federal installations as entitled to the District fares even though outside of the geographic and political boundary of the District. Its finding as to the fares of the Capital Transit between the Pentagon Building and the District appears to be predicated on this theory. The rate evidence introduced by the complaining parties falls short of demonstrating that the rates involved are unreasonable, although the Commission appears to have relied on such evidence to a large extent. On the other hand, it gave little or no weight to the comparative rate evidence introduced by respondents which is entitled at least to equal weight with the rate evidence of the complainants. That evidence reflected in Exhibit 60 indicates that the rates assailed are not unreasonable when compared with rates maintained for like services in other parts of the country.

One is driven to the view that the crux of the Commission's decision is the present comparative prosperity of the respondents which arises from the extraordinary conditions existing in the area involved as the result of the war emergency. The report comments on this condition and, as we have already shown, contains the statement that the Commission cannot anticipate radical increases in costs or radical falling off of traffic or other abrupt changes. It states that in such eventualities, respondents will be at liberty to petition the Commission for modification of its findings and order.

1455 The unwillingness of the Commission in this instance to give weight to the obvious temporary character of the present prosperity and traffic conditions of respondents is not in keeping with the traditional policy of the Commission in this respect, and we venture to say is not in keeping with the duty of the Commission. The Commission has been described as a tribunal "appointed by law and informed by experience," Illinois Central v. I. C. C., 206 U. S. 441, which has a right to draw inferences and to weigh the effect of evidence in deciding cases within the scope of its authority. O'Keefe v. I. C. C., 240 U. S. 294. The Commission has repeatedly recognized that in prescribing rates for future application it has the right and the duty to exercise its informed judgment as to conditions shown to exist at the time of

its decision and as to conditions that may probably exist thereafter. For example, in its report in Ex Parte 115 of October 19, 1937, 223 I. C. C. 657, at page 732, the Commission said:

"Looking ahead as best we may, the present unsatisfactory financial condition of the railroads can be corrected only by a material improvement in the spread between revenues and expenses. Do the facts of record warrant an 'informed judgment' that the necessary improvement in this respect can be anticipated within the reasonably near future without an increase of rates?"

After considering various aspects of the matter which need not be recited here, the Commission concluded at page 733 that the necessary improvement in the spread between revenues and expenses cannot be anticipated within the reasonably near future without an increase of rates. It therefore approved certain increases.

Another recent example of the Commission looking ahead is its decision of March 21, 1942, in Ex Parte 148, 248 I. C. C. 545. There the railroads of the country petitioned the Commission for a general increase of approximately ten percent in their freight rates and passenger fares. The railroads represented that
1456 such increases were necessary to enable them to meet large wage increases which had been granted, as well as increases in the cost of supplies. The Commission approved the increases sought on passenger fares, but approved a substantially lower increase on most of the freight traffic and none at all on other freight traffic. This action by the Commission was predicated in large part upon the assumption that there would be a sufficient increase in the traffic and the gross earnings of the railroads in 1942 over the year 1941 to offset the effect of the increased cost of operation. If, where carriers seek an increase in their rates, the Commission may project its judgment into probable future events and upon such prognostications disapprove in whole or in part the increases sought, it follows that where rate reductions are sought based upon the existing conditions of carriers the converse is true and, in such circumstances, the Commission should exercise its judgment to determine whether existing conditions are normal, abnormal, temporary, or are likely to be subject to abrupt changes in the event of conceivable happenings such as the end of the war, etc. There is ample justification here for the Commission to conclude that the present prosperity and operating conditions of respondents are due principally to the war emergency and these conditions will abruptly change with the end of the war, or with the end of the tire and gasoline rationing and other related governmental regulations. There is already a downward trend in the traffic and earnings of respondent.

The Commission has repeatedly held that in prescribing rates for future application it has the right and the duty to consider the probable effect and consequences of its action on the revenues of the carriers directly involved, as well as upon the revenues of other and competing carriers. There are numerous decisions in which the Commission so viewed its duty. It will be sufficient here merely to cite a recent decision. Property Owners' Committee v. C. & O., et al., 237 I. C. C. 549, 577.

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There is another aspect of the finding of the Commission which gives the respondent concern. It is this: As we have shown, in addition to the joint fares prescribed, the Commission has also required a reduction in the local fares of the Virginia bus lines between the four federal installations in Virginia and their terminals in the District. This is done by the requirement that respondents sell tokens at the rate of three for 25 cents in connection with the service between the particular points involved. The A. B. & W. and the other Virginia lines carry a large number of passengers between their terminals in the District and various points in Virginia other than the federal installations. These fares are not within the scope of the order of investigation and no change in them is required. For many years before and since the federal installations were established in Virginia, the respondent carried a large number of federal workers who are employed in the District to and from their homes in Virginia. If the fares required by the order of the Commission are established to and from the four federal installations, the respondents are very apt to be confronted with complaints from this group of passengers alleging that they are discriminated against by having to pay higher fares than the fares applied to and from the federal installations. There is also the possibility that complaints may be made against the existing intrastate fares within Virginia. To meet these claims by voluntary reduction in the other fares would cause a greater loss in revenue than respondents can stand.

It is, of course, fairly well settled by decisions of the Supreme Court and of this Commission that under the discriminatory clauses of the act, a common carrier is only required to treat patrons alike under like circumstances and conditions, and that different conditions will justify different treatment in the matter of rates and services. Interstate Commerce Commission v. B. & O., 145 U. S. 263; T. & P. Ry. v. U. S., 289 U. S. 627; U. S Phosphoric Products Co. v. B., A. & P., 153 I. C. C. 459; and Duluth Chamber of Commerce Case, 122 I. C. C. 739, 742. A defense to such complaints, if made, would be that the circumstances and conditions under which passengers are carried to and from the federal installations in Virginia are unlike the circumstances and conditions under which the other passengers are car-

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ried. There is no gainsaying the fact, however, that if the new fares are established under the order of this Commission it will be difficult for the Virginia respondents to hold these reduced fares to the precise points involved.

If it be suggested that the joint fares which the respondents at one time were willing to establish as a temporary measure might also have been challenged as discriminatory by passengers who live in Virginia and work in the District, or by other passengers, it may be said, in that event, the respondents would at least have been in position to have satisfied the complaints by increasing the compromise fares. Under the order of the Commission in the instant case such a discrimination could only be removed by reducing the fares between other points in Virginia. However, when the respondents agreed to the compromise plan they were conscious that it involved the risk of being charged with discrimination and it gave them no small concern. Be that as it may, it is the duty of the Commission to consider the probable consequences of its order irrespective of what the respondents, or any of them, may have been willing to do as a temporary measure to satisfy the complaints of the War and Navy Departments.

1459 THE FARES PRESCRIBED BY THE COMMISSION WILL RESULT IN A DIVERSE, IRRATIONAL, DISCRIMINATORY, AND IMPRACTICAL FARE ADJUSTMENT

Under the Commission's order, a passenger using the A. B. & W. from the Pentagon Building destined to a point reached by the Capital Transit would pay a joint fare of 13⅓ cents if he purchased a book, while the same passenger or another passenger would pay a token fare of 8⅓ cents if the trip was made from the Pentagon Building via the Capital Transit Company.

Even though there is a lack of uniformity in the existing combination of fares used by passengers between the Pentagon Building and points in the District in connection with the Capital Transit Company, the difference of 5 cents which the order of the Commission will perpetuate is not only unwarranted, but may, and no doubt will, have unexpected and injurious consequences. With such a difference in the fares, the tendency will be for the passengers to use the Capital Transit Company in preference to the Virginia bus line respondents. In fact, it is not unreasonable to assume that great pressure will be put on the Capital to establish day and night service in addition to the rush hour service it now performs to and from the Pentagon Building. Even if that should not be done, the difference in the fares will most certainly cause a diversion of traffic to the Capital which will seriously disturb the so-called "counter flow" now enjoyed to some extent by

the respondents—a fact which appears to have influenced the Commission in finding that the existing fares of the respondents are unreasonable to the extent prescribed.

The compromise adjustment which all of the respondents were at one time willing to establish as a temporary measure contemplated uniform fares. This was one of the attractive aspects of the compromise. In addition, it met the expressed wishes of the Regional Committee, which took the position that
1460 uniform fares would bring about a greater utilization of the existing bus equipment. At all events, we submit that for the Commission by order to perpetuate a diverse, unfair, and discriminatory rate adjustment is without justification and without precedent.

THE EFFECTVE DATE OF THE ORDER HEREIN SHOULD BE SUSPENDED AND POSTPONED WHETHER THIS PETITION IS DENIED OR GRANTED

The order requires that the fares and tokens prescribed be established on or before March 13, 1944, upon notice to the Commission and to the public of not less than 15 days, which means that the tariffs must be filed with the Commission not later than February 26, 1944. This petition requests that the order be suspended and the effective date thereof postponed pending reconsideration thereof. However, for the reasons hereinafter shown the order should be suspended and its effective date postponed upon the further ground that petitioner cannot comply with the order on or before March 13, 1944.

The report and order read together requires, inter alia, that the A. B. & W. establish by March 13, 1944, between the Virginia installations and its terminal in the District of Columbia a fare that will not exceed three tokens for 25 cents, equal to 8⅓ cents per one-way trip, with the right to continue the present cash fare of 10 cents per single trip. The report and order also requires the establishment of a joint fare with the Capital Transit Company not to exceed $1.60 for 12 one-way trips equal to 13⅓ cents per one-way trip.

The busses of respondent are equipped with boxes which will take cash fares of 5 cents, 10 cents, and 25 cents and a metal token which sells 8 for $1.00, or the equivalent of 12½ cents in lieu of a 15-cent cash fare applicable between various points in Virginia and the terminals of the respondent in the District of Columbia. In size this token is somewhere between a 5-cent coin and a
25-cent coin. The token used by the Capital registers
1461 5 cents in the boxes on respondents buses. It is therefore clear that before respondent can establish a token fare of three for a quarter it will have to change the mechanism in its boxes

so that they will take and properly register metal tokens of a different size from any now used. I tis questionable whether the parts necessary to make the mechanical changes in the boxes can be obtained during the war emergency; but it is certain that the change cannot be made by March 13. The alternative to a metal token is paper coupons. While such coupons are fairly feasible when sold in books of not less than 12 and are good only when taken from the books, such coupons when sold three for 25 cents involve unreasonable printing cost. Moreover, it is difficult to police the use of paper coupons even when sold in books of 12. It is impossible to do so when sold three for a quarter. The buses of respondent have no boxes which are equipped to receive paper coupons. Such coupons have a monetary value and can easily be bought and sold and used many times. If respondent is required to use paper coupons, it respectfully requests that the report and order of the Commission be modified so as to authorize the use of such coupons in books of not less than 12 salable for $1.00, or the equivalent of 8⅓ cents, for use in connection with the local fares of respondent between the federal installations and its terminal in the District of Columbia. It will not be possible for respondent to obtain suitable paper coupons in books of 12 by March 13. There are a comparatively few printers equipped to do this kind of work. One of them is located in Philadelphia. This printer recently announced that he will not take on additional printing jobs of this type for delivery in less than from 60 to 90 days.

There is still another reason why the order should be suspended until the further order of the Commission. The respondent is

1462 authorized by the report and order to increase its 26 ride book fare of 7½ cents per single trip applicable between the Army Air Force Annex and its District terminals to the prescribed three for 25 cents token fare of 8⅓ cents. If the fares prescribed by the Commission are established, respondent desires to increase the 7½ cents fare to the token fare of 8⅓ cents. However, under the Emergency Price Act as amended October 2, 1942, this increase may not be made until and unless respondent gives thirty days notice to the Office of Price Administration and consents to the timely intervention by that agency before this Commission. In view of this petition and of the other reasons given herein respondent will not be in position to give such a notice to the Office of Price Administration by March 13, 1944.

CONCLUSION

For the reasons stated, this petition should be granted. The Commission should reverse its decision herein and make such

modifications as are shown by this petition to be necessary. The Commission should also suspend the effective date of its order until the further order of the Commission pending reconsideration of this petition, and for the other reasons shown herein.

Respectfully submitted.

(Signed) ROBERT E. QUIRK,
NORMAN, QUIRK & GRAHAM,
Attorneys for Respondent,
Alexandria, Barcroft & Washington Transit Company,
1116 Investment Building, Washington, D. C.

FEBRUARY 9, 1944.

CERTIFICATE OF SERVICE

I hereby certify that I have on the 9th day of February, 1944, served a copy of the foregoing document on all parties of record in this proceeding by mailing a copy thereof properly addressed and with postage paid.

(Signed) ROBERT E. QUIRK,
Attorney.

1463 Before the Interstate Commerce Commission

Docket No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Petition of State Corporation Commission of Virginia for reconsideration and reargument before the Commission

Filed Feb. 14, 1944

1464 Comes now your petitioner, the State Corporation Commission of Virginia, and respectfully petitions the Commission for reconsideration by or reargument before the Commission, for modification of the decision of the Commission dated January 18, 1944, and the order entered pursuant thereto, in the above-entitled proceeding.

In support thereof, petitioner respectfully shows:

I. OPENING STATEMENT

While this proceeding is referred to on page 1 of the Commission's report as being "an *investigation*[1] instituted at the request of the Secretary of War, concurred in by the Secretary of
1465 the Navy, into the reasonableness and the lawfulness other-

[1] Italics supplied herein unless otherwise indicated.

wise of fares for the transportation of passengers between all points in the District of Columbia, hereinafter referred to as the District, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, hereinafter referred to as the Pentagon, Navy Annex, Army Annex, and Airport, respectively, and sometimes collectively referred to as the Virginia installations, on the other hand," it is, in reality based on a letter dated April 27, 1943, written to the Chairman of the Interstate Commerce Commission by the Honorable Henry L. Stimson, Secretary of War (4, 7, 18, 89),[2] and is, therefore, in the nature of a *complaint and answer case*. This letter written by the Secretary of War to the Chairman of the Interstate Commerce Commission complaining about the fares here in issue was made a part of the formal record herein as Exhibit No. 11.

The War and Navy Departments were called upon by the presiding Commissioner to proceed first at the hearing in their efforts to prove the existing fares unreasonable and also to show that the Commission had jurisdiction over all of the respondents herein, including the operations of the Arlington and Fairfax Motor Transportation Company and the Alexandria, Barcroft & 1466 Washington Transit Company, as involved herein, hereinafter referred to as the Arlington Line and the Alexandria Line, respectively.

The essential nature of the proceeding throughout is that of a complaint and answer case. The correctness of this position is confirmed by the following quotation from Commissioner Patterson's letter of August 14, 1943, to Col. Barron, and appearing at page 20 of the record:

"Since this investigation was instituted at the request of the War Department, which alleged that the existing fares were excessive, it is '*in the nature of a complaint*' and accordingly it is believed proper that the Department should proceed first and introduce evidence that it may have tending to show the unreasonableness of the existing fares of their unlawfulness otherwise, to be followed by other parties who have evidence of a similar nature, and then by respondents. This order of presentation of the evidence will, I believe, expedite the hearing of this case.

"It was signed by me. That has been approved by the entire Commission."

The Commission's order of investigation herein merely brings into issue the fares for the transportation of passengers, *to the extent that the Commission has jurisdiction*, between all points in

[2] Figures in parentheses indicate page numbers of record.

the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River, collectively referred to as the Virginia installations, on the other hand.

By its decision at page 7, the Commission indicates that it is in doubt as to whether or not it has jurisdiction over the Arlington Line and the Alexandria Line under the provisions of Section 203 (b) (8) of the Act and makes the finding:

1467 "In any event, we are of the opinion and find that application of the act to that transportation is, in the language of Section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration."

The Commission's order of investigation herein in no wise put the parties on notice that the Commission was going to invoke or make a finding under the "national transportation policy" provisions of the act, in order to assume jurisdiction over the operations of respondents herein. The parties have had no hearing on this issue. Not a scintilla of testimony was presented by any of the parties in the case on the question of the "national transportation policy" and accordingly the Commission's finding invoking that policy is based on no facts of record and it follows, therefore, that the Commission's report and order are invalid as we shall more fully hereinafter develop.

There is no question but what the operations of the Arlington Line and the Alexandria Line, as herein involved, are exempt from the Commission's jurisdiction under the Commission's decision in *Washington, D. C. Commercial Zone*, 3 M. C. C. 243, and the provisions of Section 203 (b) (8) of the Act.

As will be subsequently demonstrated, the finding of the Commission that the application of the Act to the transportation here involved is "necessary to carry out the national transportation policy" is based, not upon any evidence of record, but upon

1468 an arbitrary assumption that such application of the Act is necessary, etc. Furthermore, this latter finding goes beyond any issue involved herein and finds no support either in law or in fact.

So that the Commission may be fully apprised of petitioner's position with respect to this decision, reference is made to the arguments set forth in its original brief and reply brief, and leave is asked to have said arguments considered as part of this petition as though contained herein.

II. Assignments of Error

1. The Commission erred by exceeding its jurisdiction in failing to observe the procedural distinction between "investigation on its

own motion" and "investigation on complaint" and accordingly denied to the parties a fair and reasonable hearing; and erred in failing to make a complete investigation, if the proceeding is to be considered truly "an investigation on the Commission's own motion," and in failing to observe the statutory mandate to refer the matter to a properly constituted Joint Board for a hearing and recommended report and order, if the proceeding was heard and considered in the nature of a "complaint" case.

2. The Commission erred in making the following finding at page 7 of its report: "In any event, we are of the opinion and find that the application of the act to that transportation is, in
1469 the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration."

3. The Commission erred in making the finding at page 7 of its report to the effect that it has jurisdiction under Section 203 (b) (8) of the Act as follows: "In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is *reasonably clear* that their fares between the Virginia installations and the District are subject to our jurisdiction."

4. The Commission erred in requiring the Virginia Lines to establish joint fares with a streetcar company, namely, the Capital Transit Company.

5. The Commission erred in requiring and ordering the respondents herein to substantially reduce the bus fares and bus-streetcar fares between the District of Columbia and Virginia installations without taking into consideration the fares which Virginia residents have to pay for transportation from Virginia to government installations located in the District of Columbia and, in the reverse direction via the lines of respondents herein.

III. Argument

1. The Commission Erred by Exceeding Its Jurisdiction in Failing to Observe the Procedural Distinction Between "Investigation on Its own Motion" and "Investigation on Complaint" and Accordingly Denied to the Parties a Fair and Reasonable Hearing; and Erred in Failing to Make a Complete Inves-
1470 tigation, If the Proceeding is To Be Considered Truly "An Investigation on the Commission's Own Motion," and in Failing to Observe the Statutory Mandate to Refer the Matter to a Properly Constituted Joint Board for a Hearing and Recommended Report and Order, If the Proceeding Was Heard and Considered in the Nature of a "Complaint" Case.

At the initial hearing in this proceeding counsel for the State Corporation Commission of Virginia made a motion that the investigation be discontinued on the ground that the Commission did not have jurisdiction to investigate the matters under consideration. Counsel for the Virginia Commission also made a second motion in the alternative appearing at pages 12–15 of the record to the effect that if the Commission assumed jurisdiction, the investigation should be considered as a "complaint" case and referred to a properly constituted Joint Board for a hearing and a recommended report and order pursuant to the mandatory provisions of Section 205 (a) of the Intrastate Commerce Act, Part II.

That this proceeding is in the nature of a "complaint" case is definitely confirmed by Commissioner Patterson's letter of August 14, 1943, to Col. Barron, reference to which is made in the opening statement above.

Certain it is that the procedure followed by the Commission in this case has been rather confusing, irregular, and ambiguous. The record that has been made in the case is not sufficiently complete to be responsive to an investigation by the Commission on its own motion. Nor did the complaining parties, namely,
1471 the War and Navy Departments, meet the burden of proof as is ordinarily required by the Commission of complainants in "complaint" cases, with the result that the record that has been made is inadequate and does not support the Commission's report and order herein.

2. The Commission Erred in Making the Following Finding at Page 7 of Its Report: "In Any Event, We Are of the Opinion and Find That Application of the Act to That Transportation Is, in the Language of Section 203 (b) (7a), Necessary to Carry Out the National Transportation Policy. We Conclude That We Have General Jurisdiction Over All of the Fares Under Consideration"

As demonstrated in the reply brief filed by this petitioner, the Commission may not exercise its jurisdiction in the instant proceeding under the "national transportation policy" declared in the language of Section 203 (b) (7a) of the Interstate Commerce Act, Part II. Under the specific provisions of Section 203 (b) (7a) of the Act it is stated that such transportation as that herein involved shall be exempt from the Commission's jurisdiction "unless and to the extent that the Commission shall from time to time *find* that such application is necessary to carry out the national transportation policy declared in this Act." Now the question arises, how may the Commission make a legal finding that such application of the Act is necessary to carry out the national

transportation policy without having a hearing respecting such an issue? No such hearing has been had in this proceeding. As specifically ruled by the entire Commission and as stated in Commissioner Patterson's letter of August 14,
1472 1943, to Col. Barron, this proceeding is "in the nature of a complaint." The complaint referred to is the letter of Honorable Henry L. Stimson, Secretary of War, dated April 27, 1943, to the Chairman of the Interstate Commerce Commission and submitted as Exhibit 11 in this case. There is not one word in this letter of the Secretary of War to the Chairman of the Interstate Commerce Commission relating to the national transportation policy as declared by the Interstate Commerce Act. The letter merely complains that the rates of fare between the District of Columbia and the Virginia installations should be reduced. The Commission's order instituting an investigation into the rates and fares here involved makes no reference to the question as to whether or not the Commission would consider making a finding that the application of the Act to the transportation here in question is necessary to carry out the national transportation policy. Since nothing is stated in Secretary of War Stimson's letter dated April 27, 1943, to the Chairman of the Interstate Commerce Commission or in the Commission's order instituting the investigation into the fares here in question respecting the question of the Commission making a finding under the national transportation policy, as declared in the Act, your petitioner and the other interested parties in this proceeding were not put on notice that such an issue was to be determined in this proceeding. Since no adequate notice has been given to the parties that such an issue would be heard and determined by the Commission in
1473 this case, it is the position of your petitioner that the Commission's decision and report, to the extent that it is based on the Commission's finding at page 7 of its report, namely, that the application of the Act to the transportation here involved is necessary to carry out the national transportation policy, is invalid. See the decision in *Charles Noeding Trucking Company* v. *U. S.*, 29 Federal Supplement 537.

Even assuming that the notice given to the parties in this proceeding was sufficiently adequate to place the parties on notice (which we deny) that the Commission may exercise its jurisdiction in the instant proceeding under the national transportation policy declared in the Act, it is the position of your petitioner that the transportation involved herein is not such transportation as comes within the preview or purport of the national transportation policy as declared in the Act. The transportation here involved is local in nature and located wholly within a commercial zone as defined by the Commission in its decision in *Washington*,

D. C. Commercial Zone, supra, under the provisions of Section 203 (b) (8) of the Act. There is no evidence of any kind in this record to show that the transportation of passengers between the District of Columbia and the Virginia installations affects in any way interstate commerce beyond the commercial zone fixed by the Commission in the Washington, D. C. Commercial Zone case.

That being true, the query may be made, how could the
1474 transportation of passengers in the local municipal area here involved affect interstate commerce in a national way? In any event, the Commission makes no finding of fact whatsoever to justify its arbitrary conclusion reached on page 7 of its report, namely, that the application of the Act to the transportation here in question is necessary to carry out the national transportation policy. The Commission could make no finding of fact to support its ultimate conclusion in this respect because there is no evidence of record dealing with such a question. As we have before pointed out, this question is not in issue and, therefore, the Commission's finding is not only without support in law, but is likewise without support in fact.

If the Commission's finding that the application of the Act to the local transportation here involved is necessary to carry out the national transportation policy, is sound and valid, then there is nothing to prevent the Commission from making such a finding respecting local transportation at various points throughout the country. It should require no argument to convince the Commission that if it follows this principle of invoking its jurisdiction under the national transportation policy to local transportation problems, the Commission will be stretching its jurisdiction to substitute largely for most local authority over municipal and local transportation throughout the country. The Commission, under
the principle of the decision herein, could make such find-
1475 ings without having hearings to determine the issue as to whether or not the "national transportation policy" declared in the Act, should be applied to the particular local transportation under consideration.

A finding of the Commission applying the Act to transportation necessary to carry out the national transportation policy should be made only in connection with transportation truly affecting interstate commerce beyond municipalities and commercial zones as defined by the Commission under the provisions of the Act, and it was not contemplated by Congress that the Commission should invoke its jurisdiction under the national transportation policy in connection with purely local transportation such as that involved in this proceeding.

The fact of it is all of the respondents herein operate wholly within the Washington, D. C. Commercial Zone, as defined by the

Commission, with possibly one or two minor exceptions. That being true, how could such local transportation performed by respondents herein affect interstate commerce beyond the Washington, D. C. Commercial Zone? The national transportation policy could not be effected by such local transportation as that involved in this proceeding.

The provisions of Section 203 (b) (8) of the Act contemplate that the Commission should not assume jurisdiction over transportation that is local in nature such as that here involved. These provisions were deliberately inserted in the Act by Con-
1476 gress and merely perpetuate what has been the purpose of the Interstate Commerce Act since it was originally made effective in 1887. For example, the Supreme Court in *Omaha St. Ry.* v. *I. C. C.*, 230 U. S. 324, said, among other things:

"When these street railroads carry passengers across a state line they are, of course, engaged in interstate commerce, *but not the commerce which Congress had in mind when legislating in 1887.*"

3. The Commission erred in making the finding at page 7 of its report to the effect that it has jurisdiction under section 203 (b) (8) of the Act as follows: "In view of the fact that the Arlington and Alexandria lines perform only restricted intrastate transportation in the District it is *reasonably clear* that their fares between the Virginia installations and the District are subject to our jurisdiction"

Again we refer to the reply brief filed by petitioner herein respecting this question. Petitioner believes that it has demonstrated in its reply brief that the operation of the Arlington Line and the Alexandria Line, as involved in this proceeding, are clearly exempt from the Commission's jurisdiction. The operations of these two lines are over the "entire length" of the interstate routes in accordance with the laws of each state having jurisdiction and, therefore, within the exempt provisions of Section 203 (b) (8) of the Act. Their operations are exempt under the Commission's decision in the Washington, D. C. Commercial Zone case. It is noted that on page 7 of the Commission's decision a statement is made that other Virginia lines, referring to the Arlington Line and the Alexandria Line, "have only limited intrastate rights in the District and do not engage in intra-
1477 state transportation between *all points* along their lines in the District." Even so, there is nothing in the Commission's decision stating that these lines do not operate "over the *entire length* of the interstate routes in accordance with the laws of each state having jurisdiction." The Commission by referring to "limited" intrastate rights and "all points" is reading language into the Act that does not exist.

If there be any doubt or ambiguity in the statute as it reads, then such doubt should be resolved against the Commission exercising its jurisdiction respecting the operations of these two lines. In this connection, in addition to the citations mentioned on page 7 of our reply brief herein, we invite the Commission's attention to the recent decision of the United States Supreme Court in *City of Yonkers* v. *U. S.*, 88 L. ed. Adv. Ops. 241, 64 Sup. Ct. Rep. 327, decided January 3, 1944, wherein the Court emphasizes that the Commission *should have proper regard for the rightful concern of local interests in the management of local transportation facilities and that federal power should be exercised only where the statutory authority affirmatively appears and should not rest on inference alone.* Certain it is that the federal statutory authority for the Commission exercising its jurisdiction over the operations of the Arlington Line and the Alexandria Line, as involved in this proceeding, does not "affirmatively appear," nor does it "affirmatively appear" respecting the operations of the other respondents herein. The Commission's authority to
1478 exercise jurisdiction over the operations of these lines is most assuredly not clear and at best its authority is doubtful and in such case the doubt should be resolved against the Commission exercising its jurisdiction. To resolve the doubt against the Commission exercising its jurisdiction respecting these local operations would merely be following the specific pronouncements of the courts in the cases referred to.

4. The Commission Erred in Requiring the Virginia Lines to Establish Joint Fares With a Street Car Company, Namely, the Capital Transit Company

By its finding in the fourth paragraph on page 14 of the decision the Commission requires the Virginia lines to establish joint fares with the Capital Transit Company respecting the joint service indicated. It is the position of your petitioner that this requirement in the Commission's finding is in error, because of the effect of such a finding on purely local transportation and, therefore, local jurisdiction. If, for example, the Arlington Line should withdraw its service between the District of Columbia and nearby Virginia, nevertheless under the principle of the Commission's decision in this case, the purely local operation of the Arlington Line in Virginia would be affected. That is, the Commission, under the principle referred to, could order the line operating wholly within a given area such as a municipality or a county such as Arlington County, Virginia, to join an interstate over-the-road carrier in establishing joint fares between inter-

1479 state points and in so doing the Commission would, in effect, be supplanting local jurisdiction. As we see it, the consequences of the decision in this respect are far reaching and it is not believed that it is the purpose or the desire of the Commission to substitute its jurisdiction for local jurisdiction. Certainly it was not the intent or purpose of Congress in enacting the Interstate Commerce Act that federal jurisdiction should be so elastic as to supplant local jurisdiction. Under the provisions of the Interstate Commerce Act, Part II, the Commission is specifically prohibited from assuming jurisdiction, directly or indirectly, over intrastate motor carrier operations.

5. The Commission Erred in Requiring and Ordering the Respondents Herein to Substantially Reduce the Bus Fares and Bus-Street Car Fares Between the District of Columbia and Virginia Installations Without Taking Into Consideration the Fares Which Virginia Residents Have to Pay for Transportation From Virginia to Government Installations Located in the District of Columbia and in the Reverse Direction via the Lines of Respondents Herein

The volume of passengers who are residents of Virginia transported from Virginia to the District of Columbia is probably three times as great as the volume of passengers transported from the District of Columbia to the Virginia installations involved in this proceeding. Approximately seventy per cent of the passengers transported from Virginia to the District of Columbia are government employees. These Virginia passengers pay the full tariff fare of at least 10 cents to a Virginia line, plus the fare of the Capital Transit Line. Where the Virginia passengers travel over both lines, as they do in most instances from Virginia
1480 to the District of Columbia, they pay a one-way fare of at least 18⅓ cents, which is a substantially greater amount than the Commission prescribes for the transportation of passengers from the District of Columbia to the Virginia installations. These Virginia residents traveling to the District of Columbia are government employees and work at government installations in the District of Columbia and they are in the same category in this respect as the passengers traveling from the District of Columbia to the government installations in Virginia. It, therefore, appears that to the extent that the Virginia residents transported by the respondents herein from Virginia to the District of Columbia and from the District back to their homes in Virginia, pay a greater fare than the District residents pay in traveling between the District of Columbia and the Virginia installations, are subsidizing

the respondents herein to enable them to perform as great a service for the District residents at a much cheaper fare than the Virginia residents have to pay. If the fares prescribed by the Commission herein become effective, the Virginia residents will be unjustly discriminated against in violation of the Act. It appears to your petitioner that this and other questions of transcending importance have been given too little, if any, consideration by the Commission in reaching its decision in this proceeding.

IV. Conclusion

For the reasons outlined above, your petitioner respectfully prays the Commission to reopen this proceeding
1481 for reconsideration by and reargument before the Commission for the purpose of modifying and revising the decision in accordance with contentions made in this petition.

Respectfully submitted.

Frederick G. Hamley,
7411 New Post Office Bldg., Washington 25, D. C.
(Signed) H. E. Ketner,
810 State Office Bldg., Richmond 19, Va.,
Attorneys for State Corporation Commission of Virginia.

Dated at Richmond, Va., February 12, 1944.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served upon each party of record by first-class prepaid mail.

Dated at Richmond, Va., February 12, 1944.

(Signed) H. E. Ketner, *of Counsel.*

1483 At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of May, A. D. 1944.

No. 28991

Passenger Fares Between District of Columbia and Nearby Virginia

Order

Upon further consideration of the record in the above-entitled proceeding, and

It appearing, That the District Court of the United States for the District of Columbia on May 1, 1944, in its opinion in Capital Transit Company v. United States et al., Civil Action 23420, and

other actions consolidated therewith for trial,[1] held the Commission's order issued herein on January 18, 1944, to be invalid on the grounds (1) that the Commission had misconstrued section 203 (b) (8) of the Interstate Commerce Act in its application to the carriers and transportation involved, and (2) that it (the Commission), in concluding that "application of the Act to that transportation is, in the language of section 203 (b) (7a) necessary to carry out the national transportation policy," had failed to make the requisite findings to support the conclusion:

It is ordered, That, upon our own motion, said proceeding be, and it is hereby, reopened for further hearing and reconsideration with respect to the matters passed upon by the Court;

It is further ordered, That said proceeding be, and it is hereby, assigned for further hearing before Commissioner Alldredge and Examiner Cummings on the 22nd day of May, 1944, at 9:30 A. M., at the Commission's offices in Washington, D. C.;

And it is further ordered, That the parties may submit briefs, limited to the issues hereinabove defined, at a time to be determined by the presiding Commissioner.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

1484 Interstate Commerce Commission, Washington

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Notice

May 11, 1944

By order dated May 8, 1944, the Commission reopened the above-entitled proceeding for further hearing and reconsideration, limited to questions arising under section 203 (b) (8) and 203 (b) (7a) as described in said order.

At the further hearing the Commission is desirous that additional evidence be presented bearing upon (1) the extent to which, if any, respondent Capital Transit Company is engaged in performing intrastate service within Virginia, and respondents Arlington and Fairfax Motor Transportation Company, Washington, Virginia and Maryland Coach Company, Inc., and the

[1] Arlington and Fairfax Motor Transportation Co. v. United States et al., Civil Action 23421; Washington, Virginia & Maryland Coach Company, Inc., v. United States et al., Civil Action 23422; and State Corporation Commission of the State of Virginia v. United States et al., Civil Action 23423.

Alexandria, Barcroft & Washington Transit Company are engaged in performing intra-District service within the District of Columbia and (2) the extent to which, if any, application of the Interstate Commerce Act to the transportation embraced in this proceeding is necessary to carry out the national transportation policy.

Any other evidence falling within the scope of the further hearing as defined in the order dated May 8, 1944, will be received.

By the Commission.

W. P. BARTEL, *Secretary.*

1485 Before the Interstate Commerce Commission

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Motion to rescind order and dismiss proceeding

Filed May 22, 1944

Now come Capital Transit Company, Arlington and Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Co., Inc., and Alexandria, Barcroft and Washington Transit Co., appearing specially for this Motion and for no other purpose, and move to rescind the orders of the Commission, dated May 8 and May 18, 1944, reopening this proceeding and to dismiss said orders, for the following reasons:

1. The matters set down for hearing in said orders are res judicata by virtue of the judgment of the District Court of the United States for the District of Columbia rendered May 15, 1944.

2. The Order of the Court held that the Commission
1486 had no jurisdiction in this proceeding.

_____,
Attorney for Capital Transit Company.

_____,
Attorney for Arlington and Fairfax Motor Transportation Co.

_____,
Attorney for Washington, Virginia & Maryland Coach Co., Inc.

_____,
Attorney for Alexandria, Barcroft and Washington Transit Co.

Personal service of a copy of the foregoing acknowledged this —day of May 1944.

1487 At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 18th day of May, A. D. 1944

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Corrected order

Upon further consideration of the record in the above-entitled proceeding, and

It appearing, That the District Court of the United States for the District of Columbia on May 1, 1944, in its opinion in Capital Transit Company v. United States et al., Civil Action 23420, and other actions consolidated therewith for trial,[1] held the Commission's order issued herein on January 18, 1944, to be invalid on the grounds (1) that the Commission had misconstrued section 203 (b) (8) of the Interstate Commerce Act in its application to the carriers and transportation involved, and (2) that it (the Commission), in concluding that "application of the Act to that transportation is, in the language of section 203 (b) (7a) necessary to carry out the national transportation policy," had failed to make the requisite findings to support the conclusion:

It is ordered, That, upon our own motion, said proceeding be, and it is hereby, reopened for reconsideration;

It is further ordered, That said proceeding be, and it is hereby, assigned for further hearing, with respect to the matters passed upon by the Court, as above specified, before Commissioner Alldredge and Examiner Cummings on the 22nd day of May 1944, at 9:30 A. M., at the Commission's offices in Washington, D. C.;

And it is further ordered, That the parties may submit briefs at a time to be determined by the presiding Commissioner.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

[1] Arlington and Fairfax Motor Transportation Co. v. United States et al., Civil Action 23421; Washington, Virginia & Maryland Coach Company, Inc., v. United States et al., Civil Action 23422; and State Corporation Commission of the State of Virginia v. United States et al., Civil Action 23423.

1489 Before the Interstate Commerce Commission

Docket No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

HEARING ROOM "B,"

INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, D. C., Monday, 22 May, 1944.

Met, pursuant to notice, at 9:30 o'clock a. m.

Before Honorable J. HADEN ALLDREDGE, Commissioner, and G. H. CUMMINGS.

Appearances

(Same as heretofore noted.)

Other appearances: Thomas E. Sands, Jr., Lieutenant Colonel, J. A. G. D., Room 3725 Munitions Building, Washington, D. C.; for the Secretary of War. Aubrey T. Palmer, Major, J. A. G. D., Room 3726 Munitions Building, Washington, D. C., for the Secretary of War. Martin Norr, Lieutenant (J. G.), U. S. N. R., Procurement Legal Division, Navy Department, Washington,
1490 D. C., for the Secretary of the Navy. Irving L. Goldberg, Lieutenant (J. G.), U. S. N. R., Room 2314, Main Navy Building, 18th and Constitution Avenue, Washington, D. C., for the Navy Department. Richard S. Salant, Ensign, U. S. N. R., Room 2314, Main Navy Building, 18th and Constitution Avenue, Washington, D. C., for the Navy Department.

Additional appearances: Burt L. Smelker, I. C. C. Building, Washington, D. C., for the Interstate Commerce Commission. Raymond Sparks, Esq., 822 Connecticut Avenue, Northwest, Washington, D. C., for Capital Transit Company.

1492 PROCEEDINGS

Commissioner ALLDREDGE. Gentlemen, the Commission has set for further hearing at this time and place Docket No. 28,991, Passenger Fares between the District of Columbia and nearby Virginia.

The issues on further hearing ar' defined in corrected order of the Commission dated May 18, 1944.

We will take the premises of the respondents.

Mr. PRETTYMAN. If your Honor please, for the Capital Transit Company, E. Barrett Prettyman and Raymond Sparks, and we

wish to enter an appearance especially for the purpose of making a motion. I also wish to note the appearance of Mr. George E. Dunlop.

Mr. HILL. Wilmer Hill, and Franklin K. Lane, appearing for the Arlington & Fairfax Motor Transportation Company, appearing specially, Mr. Commissioner, to join in the motion that Mr. Prettyman will make.

Mr. QUIRK. Robert E. Quirk, appearing for the Alexandria, Barcroft & Washington Transit Company specially for the purposes of this motion to challenge the jurisdiction of the Commission.

Mr. BEALL. J. Ninian Beall, appearing for the Washington, Virginia & Maryland Coach Company.

Commissioner ALLDREDGE. The War and Navy Departments, are they represented?

1493 Colonel SANDS. May it please the Commission, Thomas E. Sands, Jr., Lieutenant Colonel, J. A. G. D., and Aubrey T. Palmer, Major J. A. G. D., for the Secretary of War.

Lieutenant NORR. Martin Norr, Lieutenant Junior Grade, U. S. Naval Reserve, Irving L. Goldberg, Lieutenant Junior Grade, U. S. N. R., and Richard S. Salant, Ensign, U. S. N. R., for the Secretary of the Navy.

Commissioner ALLDREDGE. I should announce that Mr. Burt L. Smelker, attorney of the Commission's Bureau of Inquiry, is appearing for the Commission.

Mr. KETNER. Mr. Commissioner, I would like to state the appearance of the Virginia State Corporation Commission.

Commissioner ALLDREDGE. Pardon me, Mr. Mr. Ketner. Frederick G. Hamley and H. E. Ketner, for the State Corporation Commission of Virginia.

Any other appearances? (No response.)

Mr. Prettyman, do you have a motion to offer?

Mr. PRETTYMAN. Yes.

On behalf of the Capital Transit Company we move to rescind the orders of the Commission dated May 8 and May 18, 1944, respectively, reopening this proceeding, and to dismiss said orders, for the following reasons:

1. The matters set down for hearing in said orders are res adjudicata by virtue of the judgment of the District Court of the United States for the District of Columbia rendered

1494 May 15, 1944, and

2. The order of the Court holding that the Commission is without jurisdiction in this proceeding.

Mr. BEALL. In behalf of the Washington, Virginia & Maryland, I join in the motion.

Mr. HILL. On behalf of the Arlington & Fairfax I join in that motion.

Mr. QUIRK. I join in that motion also, in behalf of the Arlington, Barcroft & Washington Transit Company.

Mr. KETNER. Mr. Commissioner, I have a similar motion that I desire to present at this time on behalf of the Virginia Commission, and in making this motion the Virginia Commission reserves its rights under the previous motions which it has made herein and which appear of record, and also under the objections which it has heretofore made to the procedures and orders of the Commission entered herein.

As grounds for this motion it is respectfully shown:

1. The matters assigned for further hearing in the said orders are res adjudicata.

2. The order of the statutory three-judge court dated May 15, 1944, in Capital Transit Company, a Corporation, Plaintiff, v. United States of America, and The Interstate Commerce Commission, Defendants, Civil Action 23420, and cases consolidated therewith, is a final order and the Commission has no jurisdic-
1495 tion to contest the issues decided and determined by that court in any manner other than by appeal.

3. The Commission is without authority to take or consider evidence respecting the matters passed upon by the court or any other matters respecting the operations of the respondents as herein involved for the reason that the court in the case above referred to made the definite finding that the Commission has no jurisdiction in this proceeding.

Wherefore, the State Corporation Commission of Virginia moved that the order of the Commission dated May 8, 1944, and the corrected order of the Commission dated May 18, 1944, reopening this proceeding for reconsideration and further hearing be rescinded and that the Commission issue an order dismissing the proceedings from its docket.

I will hand a copy of this now to the reporter.

Commissioner ALLDREDGE. These motions will be referred to the Commission and be passed upon by it in due course. The hearing will proceed.

Do respondents have any testimony to offer in chief?

Mr. QUIRK. We have none.

Mr. HILL. The Arlington & Fairfax has none.

Mr. BEALL. Washington, Virginia & Maryland has none.

Mr. PRETTYMAN. Capital Transit Company has none.

Commissioner ALLDREDGE. Do the War and Navy Departments have any testimony to offer?

Colonel SANDS. May it please your Honor, the War Department has some very brief testimony, but unfortunately we

1496 did not realize we would reach the testimony this early. Our witness had a staff meeting which he could not avoid, at approximately 11 o'clock. If your Honor will give us a few moments, we will try to reach him, and let the Navy Department proceed with its testimony, if that is agreeable.

Mr. HILL. May it please the Commission, the position of the Alexandria & Fairfax is that there is a complaint by the Secretary of War and the Secretary of the Navy, and that there is no burden upon us to proceed in this case, considering also that we are appearing specially. The case was handled as a complaint case before.

Colonel SANDS. May I ask counsel if they are appearing specially, in view of the Commissioner's ruling on the motion, or rather, reservation of ruling? I would like to know whether counsel are now appearing generally for the purpose of participating in the hearing and examination of the witnesses.

Mr. KETNER. I will say that it is our purpose, on behalf of the Virginia Commission, to appear specially in the case questioning the Commission's jurisdiction, but any witnesses that take the stand whom we may desire to cross-examine we would like to have that privilege.

Colonel SANDS. If your Honor please——

Mr. KETNER. It would be only on the jurisdictional question.

1497 Commissioner ALLDREDGE. I do not think that the right of the Respondent should be prejudiced here because these motions cannot be ruled on immediately. If they like they may come back and appear generally, and we will grant you permission to cross-examine any witnesses the other side presents and to offer rebuttal if you desire to.

If the Navy Department ready to proceed?

Lieut. NORR. Sir, with reference to the first question covered by the Commission's notice, it is the Navy's position that under the plain language of the statute as construed by the Commission in the Schwerling and other cases, the efforts of these interstate carriers to avoid regulation by this Commission of their interstate fares must fail because their intrastate rights in the District of Columbia are limited.

Now, it is also our position that the record already shows what limits there are on their intrastate rights. In response to the Commission's request for further evidence we have one additional bit of evidence and that consists of certified copies of the orders of the Public Utilities Commission of the District of Columbia under which the carriers are operating, and I do not think there will be any objection on the ground of form to these, and if there is no objection of that kind I offer those in evidence, certified copies of the orders.

Mr. QUIRK. Mr. Commissioner, the Commission has reopened this case to cover two points. As to the first point
1498 we are certainly on sound grounds in saying that that is res adjudicata. Everything that can ever be put in this record concerning the kind of services performed by the three Virginia companies in the District of Columbia and the Capital Transit Company in Virginia is in the record. All that was put before the court and it decided that question without any qualification, there was no reservation on that, they simply disagree with the Commission, they did not agree with this Commission's interpretation of the meaning of the phrase, "and also lawfully engaged in intrastate transportation, over the entire interstate rates."

Now the court has decided that question and everything that is attempted to be put in on that question is objectionable, because it is res adjudicata. The other question may be open for debate but that one I do not believe is.

Commissioner ALLDREDGE. All right. Now have you seen the certified exhibits that counsel for the Navy are proposing to offer here?

Mr. QUIRK. I have not seen them, Mr. Commissioner.

Commissioner ALLDREDGE. All right. Distribute them among the respondents and let them look at them. Tell me whether or not you have any objection to the form.

Mr. LANE. If the Commissioner please, I am under the impression that this order which has just been handed to me by counsel is already in the record and was introduced at the
1499 hearing last August or September. Counsel refers to it as a certificate, and I think he is in error. It is an order of the Public Utilities Commission regarding the operations of the Arlington and Fairfax, and if I am not mistaken, it has already been introduced into the record some time ago. I would like at this time, if the Commissioner please, to make a motion and suggest to the Commissioner that the order of May 8——

Commissioner ALLDREDGE. Pardon me. Let me dispose of this first and then I will receive your motion.

Mr. LANE. All right. We will object to it on the ground that it has already been introduced into the record.

Commissioner ALLDREDGE. Is that your only objection?

Mr. QUIRK. We do not question the authenticity of it.

Commissioner ALLDREDGE. Oh, I see.

Mr. LANE. We do not question the authenticity of them at all.

Commissioner ALLDREDGE. Well, if it is already in the record a reintroduction will not do any harm.

Mr. QUIRK. I do not know whether it is in the record. Ours is in the record. My objection does not go to that, you under-

stand, Mr. Commissioner, but merely that that *that* has been decided by the District Court and until that is appealed from nothing can be done about it.

Commissioner ALLDREDGE. So far as this hearing is concerned, the objection will be overruled, and the exhibits will
1500 be admitted.

That will be designated as Exhibit No. 107.

Lieut. NORR. Arlington & Fairfax Motor Transportation Company Order No. 2508 of the Public Utlities Commission is No. 107.

(Petitioners' Exhibit No. 107, by counsel, received in evidence.)

Mr. HILL. Mr. Commissioner, I believe it is understood that there is no necessity for our noting an exception to an adverse ruling by the Commissioner.

Commissioner ALLDREDGE. The rule applies that in the case of an adverse ruling it is not necessary to note an exception.

Lieut. NORR. With reference to the Alexandria, Barcroft & Washington Transit Company, Order No. 2507 of the Public Utilities Commission.

(Petitioner's Exhibit No. 108, by counsel, received in evidence.)

Lieut. NORR. With reference to the Washington, Virginia & Maryland Coach Company, Inc., there are a series of orders, No. 1881, 2187, 2153, 2509, 2686, and 2428.

Commissioner ALLDREDGE. Well, that series of orders will be given one exhibit number. The reporter will tell you what number it is.

The REPORTER. 109.

(Petitioners' Exhibit 109, by counsel, received in evidence.)

1501 Lieut. NORR. We have no further evidence on this phase of the proceeding.

Commissioner ALLDREDGE. The attorneys for the respondents are privileged to inspect those that the reporter has designated as to being proper copies.

Now, Mr. Lane.

Mr. LANE. If the Commissioner please, I would like at this time to move that the hearings be abandoned, and laying aside the res adjudicata question and calling to the Commission's attention the two orders issued in this proceeding, one the order of May 8, and second the corrected order of May 18 says that said proceedings are her by assigned for further hearing with respect to matters passed upon by the court as above specified. That can only refer, as the Commissioner knows, to items No. 1 and 2 in the first paragraph of the order. Item No. 1 is that the Commission has misconstrued Section 203 (b) (8) of the Interstate Commerce Act in its application to the carriers and transportation in-

volved, and I respectfully submit that that is a legal point not open to public hearing and that testimony cannot be heard or taken.

Point No. 2 is that the Commission in concluding that "application of the Act to that transportation is, in the language of Section 203 (b) (7a), necessary to carry out the national
1502 transportation policy" has failed to make the requisite findings to support the conclusion.

That also, if the Commissioner pleases, is a legal point which is not susceptible to factual evidence. The proper procedure for the Commission would be to appeal, and I respectfully submit that irrespective of whether or not the matters are res adjudicata, these are two legal questions of the failure of the Commission to make proper findings, or the Commission's misconstruction of the statute, are not the proper subject matter for any hearing.

Commissioner ALLDREDGE. Your motion is overruled. We will proceed with the taking of testimony.

Lieut. NORR. May I say only with respect to the first motion, that we have not received copies of this motion. I take it that this last motion was submitted orally. We would appreciate copies of the motion.

Mr. PRETTYMAN. Our motion was an oral motion.

Mr. HILL. That is true of Mr. Lane's motion, it is not written out.

Lieut. NORR. I am sorry. I thought the motions were written out.

Commissioner ALLDREDGE. That is all right. I understand that that is all the evidence that the Navy has to offer.

Lieut. NORR. Yes, sir; on Point 1, sir.

Commissioner ALLDREDGE. Oh, Point 1, pardon me. Well now, the Army is not ready yet.

1503 Colonel SANDS. If your Honor please, we have none on the intrastate matter that has been presented by the Navy. We do have some through General Nelson, who will be ready about 10 o'clock.

Mr. SMELKER. If you are going to drop Point 1 and proceed to Point 2, the Commission has some evidence on Point 1 to put in at any time.

Commissioner ALLDREDGE. All right. Does anyone have any further evidence to offer as to Capital Transit Company operations in Virginia?

(No response.)

All right, Mr. Smelker, you may offer your testimony.

Mr. SMELKER. I call Mr. Kroutler.

B. L. KROUTLER was sworn and testified as follows:

Direction examination by Mr. SMELKER:

Q. State your full name, Mr. Kroutler.

A. B. L. Kroutler.

Q. And what is your position?

A. Special Agent, Interstate Commerce Commission, Bureau of Inquiry.

Q. You are special agent of the Interstate Commerce Commission, Mr. Kroutler?

A. Yes, sir.

Q. Were you assigned to make a check at Jefferson
1504 Memorial bus stop of the Arlington, Barcroft & Washington and the Arlington & Fairfax bus stops, and the number of passengers?

A. Yes, sir.

Q. What time did your check cover, what period?

Mr. HILL. Mr. Commissioner, I would like to renew the objection we have made to the asking of any further questions of this witness on the grounds stated.

Commissioner ALLDREDGE. Your objection is overruled.

Mr. QUIRK. I want to objection to questions on Point No. 1 all the way through, without making it to each question; may it be so understood?

Commissioner ALLDREDGE. That is understood, and may it be understood that those objections are overruled?

Let the record show that all respondents objected to testimony on Point 1, including Mr. Prettyman, in the Commission's notice of May 11, 1944.

Mr. KETNER. And that would apply to the Virginia Commission, the intervenor.

Commissioner ALLDREDGE. And likewise the Virginia Commission, and let the record show that all those objections are overruled.

Mr. HILL. You confine that to Point 1. If inadvertently he should slip off on to Point 2, will it be understood that our objection lies to that also?

Commissioner ALLDREDGE. It is so understood.
1505 Mr. SMELKER. All right. Will your continue now, Mr. Kroutler?

The WITNESS. Why, the period covered by the review that was made of the number of stops made at the Jefferson Memorial was on last Saturday, beginning at 9 o'clock in the morning, and ending at one in the afternoon.

By Mr. SMELKER:

Q. How many A. B. & W. busses northbound during that period?

A. There were five.

Q. How many passengers were picked up?

A. Well, I haven't got that indicated in detail. The number of stops was 5, and I can tell you by going over this statement that I have before me, which was prepared from original notes that I made at the time of the examination. It may be well to include in this record just what I have here which is the result of my inspection.

At 9:45 a. m.—just a moment.

Q. You don't need to go into details; just make the summary.

A. Well, there was one soldier picked up at 9:45, going north-bound.

North-bound, at 10:55 two women, one uniformed.

Examiner CUMMINGS. Picked by what company?

The WITNESS. By the A. B. & W..

At 11:59, one soldier.

At 12:09, one man.

1506 At 12:22, a soldier and a girl.

Mr. QUIRK. Nothing abnormal about that, is there?

Mr. HILL. Mr. Kroutler, you said 9:45, and 10:55; would you give me the next one, please?

The WITNESS. At 11:59.

Mr. HILL. How many did he pick up at that time?

The WITNESS. 11:59, one soldier.

Mr. HILL. Thank you, sir.

By Mr. SMELKER:

Q. How many A. B. & W. stops south-bound?

A. Fourteen.

Q. Fourteen. And do you have the number of passengers who were discharged?

A. No; I don't. I can't give those to you, though, in just a moment.

Commissioner ALLDREDGE. Well, can you tell us whether there were passengers discharged?

Mr. SMELKER. On each stop were there one or more passengers discharged?

The WITNESS. Yes. At each stop there was either one or more passengers discharged.

By Mr. SMELKER:

Q. That is sufficient, I think. How many Arlington & Fairfax busses stopped north-bound?

A. Two.

Q. And were there passengers picked up at each stop?

1507 A. Yes.

Q. How many Arlington & Fairfax busses stopped south-bound?

A. You mean to pick up passengers south-bound?

Q. South-bound, to let off passengers and discharge passengers.

A. That is Arlington & Fairfax?

Q. Yes.

A. I don't see but one south-bound to let off passengers.

Q. Well, no matter, how many stops there were that let off passengers or not.

A. You mean whether they let off or picked up passengers?

Q. Yes.

A. South-bound.

Q. We might as well have that in the record.

A. There were only two.

Q. And only one where a passenger was discharged?

A. That is right. Well, a passenger was discharged on one and a passenger was picked up on the other.

Q. This morning did you measure the distance from the Bureau of Engraving stop by these two lines to 12th and Pennsylvania Avenue?

A. Yes; I did.

Q. How did you make the measurements?

A. It was made in an automobile, by reading the speedometer.

Q. And what is the distance?

A. It is 0.8 miles, that is eight tenths of a mile.

1508 Q. Eight-tenths of a mile. Now, did you measure the distance between the Jefferson Memorial stop and the Highway Bridge?

A. Yes; I did.

Q. And what is that distance?

A. It is fifteen one-hundredths of a mile; 0.15.

Q. It was made in the same way?

A. Yes, sir.

Commissioner ALLDREDGE. What end of the bridge, what part of the bridge?

The WITNESS. The approach of the bridge on the District side. I presume that would be the north end of the bridge.

Commissioner ALLDREDGE. The District end of the Bridge?

The WITNESS. That is right, the approach to the bridge, the north end of the bridge on the District side.

By Mr. SMELKER:

Q. Can you make any statement concerning the number of busses that did not stop; I know you did not make an actual check.

A. Oh, there were very, very many of them, I would not even hazard a guess as to the number of them; at least a hundred.

Mr. SMELKER. You may cross-examine.

Cross-examination by Mr. PRETTYMAN:

Q. The Capital Transit does not serve the Jefferson Memorial, does it, Mr. Kroutler?

A. As far as the actual investigation that I made during
1509 the period covered by my review, there were no Capital Transit busses stopped.

Q. What is the nearest point they serve?

A. I have no idea.

Q. All the passengers are discharged or picked up at the Jefferson Memorial were carried by the two companies you have named, were they?

A. Yes, sir.

Q. That is all the passengers there were?

A. Well, I don't know; that is all I saw.

Q. Did you have any opportunity to see any other busses?

A. You mean was the bus stopped where I was stationed?

Q. That is right.

A. No, I didn't; no.

Q. Did you see any discharged there by any other buss companies?

A. No; I did not.

Mr. PRETTYMAN. That is all.

Cross-examination by Mr. LANE:

Q. Mr. Kroutler, you testified that the distance between Jefferson Memorial and Highway Bridge was what?

A. 0.15 of a mile.

Q. Does your speedometer calculate hundredths of a mile?

A. No; but it does calculate tenths of a mile.

Q. So you can compute that in hundredths?

1510 A. Yes; I think so.

Q. Have you had your speedometer checked?

A. Well, as a matter of fact, it was not my automobile that the trip was made in.

Q. Whose automobile was it?

A. One of the attorneys of the Bureau, Mr. E. V. Burns.

Q. In calculating the distance from the Jefferson Memorial to 12th and Pennsylvania Avenue, over what streets did you go?

A. From 12th and Pennsylvania we went south on down Constitution, west on Constitution to 12th, south on 12th to C Street,

west on C to 14th and south on 14th to the stop at 14th and D, which is the stop of the Bureau of Engraving, to 14th Street.

Q. Well is that eight-tenths of a mile?

A. Yes, sir.

Q. As you have designated?

A. That is right.

Q. Well, it is further from the Bureau of Engraving and Printing to Jefferson Memorial, isn't it?

A. Oh, yes.

Q. You testified it was eight-tenths of a mile; now you have given me a route——

A. No; I testified it was eight-tenths of a mile to the Bureau of Engraving stop.

1511 Q. From 12th and Pennsylvania Avenue?

Mr. SMELKER. From 12th and Pennsylvania Avenue.

Mr. LANE. What is the route of the Arlington and Fairfax, do you know?

The WITNESS. Oh, I don't know.

By Mr. LANE:

Q. You don't know what bus company runs over that route, do you?

A. No; but I understand that the A. B. & W. does. I don't know whether as a matter of fact it does.

Q. Do you know the route of the Arlington & Fairfax?

A. No; I don't.

Q. You wouldn't know whether they are the same or different?

A. No; I wouldn't know.

Mr. LANE. That is all.

Cross-examination by Mr. KETNER:

Q. Do you know whether there is any other common carrier service maintaining the Jefferson Memorial stop?

A. Will you restate the question, please?

Q. Do you know whether there is any other common carrier service maintained at that point other than the two lines you testified to?

A. No; I don't know anything about the details of any other common carrier having a transportation stop, but I do know that none stopped during the period that I was making the in-

1512 vestigation.

Q. So far as you know that is the only common carrier service maintained at that stop?

A. Yes, sir; Arlington & Fairfax and Alexandria, Barcroft & Washington.

Mr. SMELKER. Well, he has testified that he does not know.

Mr. KETNER. That is all right. I am satisfied with his answer.

Mr. SMELKER. That is all, Mr. Kroutler.

Commissioner ALLDREDGE. Does that speedometer that you used prove to be in good working order?

The WITNESS. Yes, sir; it did, Mr. Commissioner. The fact of the matter is we tested it both going and coming and the registration was the same.

By Mr. LANE:

Q. Well, did you arrive—how did you arrive at the even one-hundredths; will you just explain that for the record?

A. Well, the speedometer, of course, indicated the number of miles, and in addition to that there is another spot on it that indicates tenths of a mile, and we determined the split between the two positions of the figures shown on the speedometer with respect to the tenths.

Mr. LANE. Just half way between the two?

The WITNESS. Just about half way between eight and
1513 nine, or seven and eight, as the case may be.

Mr. HILL. You did not set it at Zero at any point that you calculated it from, did you?

The WITNESS. No; but strange to say, it just happened that when we started it was on zero, both at zero with respect to the number of miles and also the number of tenths of a mile.

Mr. HILL. On each one of your calculations was that true?

The WITNESS. Yes.

Commissioner ALLDREDGE. Any further questions?

Mr. HILL. It was not true at destination, was it?

The WITNESS. No; it was not.

Mr. HILL. You figured that the hand showing tenths was about half way out; is that correct?

The WITNESS. That is right.

Mr. SMELKER. That is all, Mr. Kroutler.

Commissioner ALLDREDGE. Any further questions?

Mr. SMELKER. No.

Commissioner ALLDREDGE. You are excused.

(Witness excused.)

Mr. SMELKER. Mr. Mills.

CHARLES R. MILLS was called as a witness and being duly sworn, testified as follows:

1514 Direct examination by Mr. SMELKER:

Q. State your full name.

A. Charles R. Mills.

Q. You are a special agent of the Interstate Commerce Commission?

A. Yes, sir.

Q. Were you assigned to make a check at the Jefferson Memorial bus stop in the District of Columbia of the Alexandria, Barcroft & Washington and the Arlington & Fairfax busses and the number of passengers picked-up and discharged?

A. Yes, sir.

Q. What period was covered by your check?

A. From one to five p. m. on Saturday, the 20th.

Q. How Many Alexandria, Bancroft & Washington busses stopped north-bound during that time?

A. North-bound there were nineteen stopped, that is to pick up passengers; there were a great many more stopped but only 19 picked up passengers.

Q. Yes. And how many Alexandria, Barcroft & Washington busses stopped south-bound?

A. Well, there were a great many stopped. There were 12 picked up passengers or discharged passengers.

Q. Or discharged passengers. How many Arlington & Fairfax busses stopped north-bound?

A. I don't know how many stopped; there were a good many stopped, but there was only two that picked-up passengers.

1515 Q. How many Arlington & Fairfax busses stopped south-bound?

A. I don't know how many stopped, but there weren't any that discharged any passengers. Several picked up passengers.

Q. Picked up passengers south-bound?

A. Yes, sir.

Q. And discharged passengers north-bound that you didn't keep track of?

A. I didn't keep track of them.

Q. Now, did you measure the distance between the Jefferson Memorial stop, where you were stationed, and the north end of the Highway Bridge?

A. No, I didn't measure it; I put down the speedometer readings that you gave me.

Q. Well, didn't you look at the speedometer?

A. No, sir.

Mr. SMELKER. That is all.

Commissioner ALLDREDGE. You may cross-examine.

Mr. HILL. No questions.

Cross-examination by Mr. LANE:

Q. Mr. Mills, did either the A. B. & W. or the Arlington & Fairfax stop at any other point except at Jefferson Memorial that you noticed?

A. Well, I only checked the Jefferson Memorial; I didn't notice any other points; there wasn't any other stop anywhere near there that I know of.

1516 Q. Why did you pick out the Jefferson Memorial stop?

A. Why, because I was instructed.

Q. Who instructed you?

A. Mr. Smelker.

Q. Did he state to you the purpose of the check?

A. No, sir.

Q. And you know no reason why he selected that particular spot to check?

A. No, sir.

Q. What was the mileage that he gave you?

A. On the south-bound, he gave me the speedometer reading as 38,267.3.

Q. From where to where?

A. From this Jefferson Memorial stop.

Q. Yes.

A. To the north end of the Highway Bridge, and the start of the speedometer, he gave it to me as 38,267.15.

Q. Give me the first figure again.

A. 38,267.30.

Q. You do not know where the passengers were destined that were picked up either by the A. B. & W. or the Arlington & Fairfax, do you?

A. No; you are speaking of the north-bound?

Q. In either direction.

A. Where they were going?

1517 Q. Yes.

A. I didn't keep track of those going south that were picked up; of course, I wouldn't know where they were going at the stop. I know they went across the bridge; there wasn't any stop this side of the bridge.

Q. Well, but north-bound, you don't know where they were going, do you?

A. I do not.

Q. Do you know whether any of the passengers picked up at the Jefferson Memorial going south were discharged at the north end of the Highway Bridge?

A. State that again.

Q. Any of the passengers picked up at the Jefferson Memorial on south-bound trips, do you know whether they were discharged at the north end of the Highway Bridge?

A. Well, I know they were not. The bus didn't stop. I can see the end of the bridge from where I was.

Q. How about the south end of the bridge?

A. I couldn't say that; I don't know.

Q. Were there any other stops made by either the A. B. & W. or the Arlington & Fairfax busses?

A. Yes.

Q. Between—just let me finish my question. Between the north end of the Highway Bridge and South Maine Avenue that you observed?

1518 A. I don't know where South Maine Avenue is at.

Q. Then you don't know whether there were any other stops made by those busses?

Mr. SMELKER. He testified there were no stops made between Jefferson Memorial stop and the bridge.

Mr. LANE. How about the other direction?

Mr. SMELKER. I don't know; I don't believe he knows.

Mr. HILL. Well, he can say so.

By Mr. LANE:

Q. Were there any made at the tourist camp?

A. I don't know where the tourist camp is.

Mr. LANE. That is all.

Cross-examination by Mr. PRETTYMAN:

Q. Mr. Mills, I am sorry I don't think I understood; these busses, 19 I believe, stopped to pick up passengers north-bound; then you said a great many more stopped; did you mention all of the busses that stopped?

A. Yes.

Q. Well, how many is that that stopped?

A. I have got it in—I haven't got it with me; it is upstairs.

Q. I see.

A. But there were approximately that many more stopped.

Q. South-bound the same thing?

A. Yes, just about as many stopped to pick-up passengers south-bound as stopped to discharge passengers. In other

1519 words, there was 12 stopped south-bound to discharge passengers, and approximately that many more stopped to pick-up passengers.

Likewise, on the north-bound, 21 all told stopped north-bound to pick-up passengers and approximately that many also stopped to discharge passengers.

Q. Now, on this speedometer reading, just as matter of curiosity, I did not understand, Mr. Smelker gave you certain readings. Were those readings made by Mr. Kroutler; did you and Mr. Kroutler travel together, did you go over the route in an automobile?

A. I rode with Mr. Smelker from the Jefferson Memorial side over the Highway Bridge, I rode in his car.

Q. I see. And he read his speedometer?

A. Yes, I was in the back seat.

Q. Oh, I see.

A. Yes.

Exam. CUMMINGS. Mr. Mills, do you know whether there are any bus stops signs other than those opposite the Jefferson Memorial between the north end of the Highway Bridge and Maine Avenue?

The WITNESS. Well, I don't know where Maine Avenue is.

Exam. CUMMINGS. Well, do you know where what used to be Water Street is?

The WITNESS. Yes.

1520 Exam. CUMMINGS. Well, that is Maine Avenue.

The WITNESS. All right.

Exam. CUMMINGS. Now, are there any bus stops or signs other than the one opposite the Jefferson Memorial between the north end of the Highway Bridge and Maine Avenue?

The WITNESS. I could not testify as to that; I don't know.

Commissioner ALLDREDGE. Any further questions of this witness?

Cross-examination by Lieut. NORR:

Q. Mr. Mills, do you know how many A. B. & W. busses went by while you were observing that stop?

A. I have it upstairs. I can tell you approximately.

Mr. SMELKER. But you did not understand the question.

The WITNESS. Yes; I understood the question.

Mr. SMELKER. Ask the question again.

By Lieut. NORR:

Q. The total number of A. B. & W. that went by the stop during the period you were observing?

A. Yes; I have it upstairs, but I can tell you approximately.

Q. What is the approximate figure?

A. Approximately there were about I would say around forty or fifty to the hour.

Q. Is that in one direction or in both directions?

A. Both directions.

Q. Both direction. How many Arlington & Fairfax

1521 busses went by during the same period?

A. Oh, not over about one-tenth of that number.

Q. About four or five an hour then in both directions?

A. Yes. There were also some other busses I noticed, one or two Arnold Lines, and they also stopped to discharge passengers from beyond the bridge.

Q. Was that north-bound or south-bound?

A. North-bound.

Q. Do you know whether there is an Army service forces show in West Potomac Park which is opening today, that was under construction last week?

A. Well, both yes and no. I saw it in the paper that there was to be one there and we drove around there, and I saw some evidence of it, but as to the details, I know nothing about it.

Q. But you do know that there is; you say there is evidence of an Army service forces show being erected in West Potomac Park?

A. Yes, sir.

Q. Do you know whether the stop after Jefferson Memorial is the nearest stop to that show?

A. Well, I don't know positively, no; that is the only sign I noticed was the sign at Jefferson Memorial stop, and I didn't notice any other stop signs between that and the Highway Bridge.

1522 Q. Have you ever made a check on a day when there was no unusual activity in that part of the District like the construction of the Army service forces show?

A. I never made any other check but this one Saturday.

Q. And what was, what time was it made; what hour of the day on Saturday?

A. One to five.

Q. And what was your estimate of the weather on Saturday?

A. Cloudy.

Mr. HILL. Cool?

The WITNESS. Cool and cloudy.

Commissioner ALLDREDGE. Any further questions of this witness?

Mr. SMELKER. No other questions.

Commissioner ALLDREDGE. You are excused.

(Witness excused.)

Mr. SMELKER. Mr. Commissioner, I had one other witness covering the period from five p. m. to nine p. m. He was suddenly taken sick and is not able to appear right now. I do not know whether he will be before the hearing is concluded. His testimony is written out. I do not know whether there will be any objection to having it submitted as an exhibit.

Commissioner ALLDREDGE. Well, you might see.

Mr. SMELKER. How about it? It is of the same character as this testimony that has already gone in. It has

1523 been written out.

Mr. HILL. Mr. Commissioner, I do not object on any such technical grounds as that. Of course, we still reserve the objection we have made before, but otherwise we have no objection.

Mr. LANE. As far as the Arlington & Fairfax is concerned, we will stipulate with him that the other witness will testify along the same general lines.

Mr. SMELKER. Well, I would like to have permission to send for that document and look at it myself.

Mr. LANE. If counsel is disposal to doubt it perhaps I should not stipulate, but I was assuming counsel wanted it in the record.

Mr. SMELKER. I would like to suggest that I want to send for it in order to read it, as you suggest.

Commissioner ALLDREDGE. Is there any further testimony on Point 1 of the Commission's notice? Is the War Department ready to proceed on the other point?

Colonel SANDS. We are ready to proceed.

Mr. QUIRK. I want to move that all this testimony on Point 1 be stricken on the grounds heretofore stated, and on the additional ground that the character of the evidence itself is irrelevant, incompetent and immaterial.

Commissioner ALLDREDGE. Your motion is overruled.

Mr. HILL. May we be shown as joining in that motion?

1524 Commissioner ALLDREDGE. Yes; and your motion is overruled also.

Mr. BEALL. I wish to be shown as joining in the motion.

Commissioner ALLDREDGE. All right. And Mr. Prettyman too?

Mr. PRETTYMAN. Yes; thank you.

Commissioner ALLDREDGE. Now, Colonel Sands.

Colonel SANDS. We are ready to proceed. We would like to call General Nelson, please.

General OTTO L. NELSON, Jr., was called as a witness and being duly sworn, testified as follows:

Direct examination by Colonel SANDS:

Q. Will you state your name, rank, and present station?

A. My name is Otto L. Nelson, Jr., U. S. Army. I am Assistant Deputy Chief of Staff, U. S. Army?

Mr. LANE. What title?

The WITNESS. Assistant Deputy Chief of Staff, U. S. Army.

By Colonel SANDS:

Q. How long have you held your present assignment, General?

A. Since March 1942.

Q. And will you just relate, briefly, what the functions of your present assignment consist of?

A. I am in the Office of the Chief of Staff and my work

1525 consists of more or less general supervision of the policies laid down by the Chief of Staff and the Deputy Chief of

Staff, and includes supervision of the various War Department General Staff Divisions and the three major commands insofar as it relates to carrying out of certain policies.

The part that would be pertinent to this hearing is that we make the over-all space assignments to the various divisions of the War Department General Staff and to the three major commands, that is, the Air Forces, the Ground Forces, and the Service Forces.

Q. In your position and present assignment, General, then you are acquainted with the physical location of all the principal divisions of staff or other branches of the Army; is that correct?

A. That is correct.

Q. And will you state the principal organizations or branches of the War Department that were located either in the Pentagon Building or in the Army Air Forces Annex No. 1 during or between March of 1943 and March, 1944?

A. Most of the principal activities of the War Department are of course located in the Pentagon Building. The Office of the Secretary of War, the Office of the Undersecretary of War, Assistant Secretary of War for Air, and the Assistant Secretary of War, Mr. McCloy; the Office of the Chief of Staff, all of the War
1526 Department general and special staff divisions, including the operations division of the War Department General Staff, the Intelligence Division of the War Department General Staff, the Headquarters of the Army Service Forces, and a good many of their principal operating activities, to including such offices as the offices of the chiefs of technical services, as the Chief Signal Officer, Chief of Transportation, Chief of Ordnance, a great many of the principal staff agencies of the Army Service Forces, such as the Director of Matériel, Director of Operations, the Director of Supply, and a great many other important activities of the Army Service Forces.

Q. Then does the headquarters of the Army Air Forces include all the principal staff and operating agencies of the Army Air Forces?

A. In Army Air Force Annex No. 1.

Q. At Gravelly Point?

A. At Gravelly Point.

Q. Pardon me, General, are you covering the same period now between March 1943 and March 1944?

A. That is right.

There is the Air Transport Command, part of the headquarters of the Air Forces is at Gravelly Point, the Chief of the Chemical Warfare Service, and all the officers of the Chemical Warfare Service are at Gravelly Point. And some time

during the period there was moved to Gravelly Point
1527 a part of the officers of the Chief of Engineers' Office and part of the activities of the Chief of Finance's Office.

I believe that is a fair summary, without going into too great detail.

Q. Now, General, when you refer to Gravelly Point I will assume you are referring only to the same place that is otherwise designated as Army Air Forces Annex No. 1; is that correct?

A. That is correct.

Q. Now with respect to the period from March 1943, to the present time, General, can you tell us whether or not the installations you have described as at the Pentagon Building are still there?

A. They are still there.

Q. And the installations you described as previously in or moved into Army Air Forces Annex No. 1, are they still there?

A. They are still there.

Q. All these installations that you described, General, have staffs and require employees to carry out their functions?

A. That is correct. I believe there are slightly in excess of some 30,000 in the Pentagon.

Q. Now, would you care to make a comparison, General, as to whether between the 1st of March 1943, and as of the present time, whether the extent of the War Department's activities, the most of them being located either in the Pentagon or in the Army Forces Annex No. 1, as compared with those
1528 located within the District of Columbia proper?

Mr. PRETTYMAN. I object to that on the ground that it is purely a speculative answer. He is asking, as I understand, the comparative importance of the forces exercised by some indeterminate division of the War Department personnel.

Colonel SANDS. No, if your Honor please, I am asking for a comparison.

Commissioner ALLDREDGE. Would you read the question, Mr. Reporter?

(Question read.)

Colonel SANDS. Maybe the question is a little bit jumbled as it is read. May I withdraw it, Mr. Commissioner?

By Colonel SANDS:

Q. General, let me ask you this first, the installations that you have related as being physically located either in the Pentagon or in Army Air Forces Annex No. 1; I will ask you whether or not they are all essential and important War Department activities?

A. They are.

Q. And numerically, General, are there a number of War Department activities so located within the District proper?

A. Yes, there are still a number of War Department activities located in the District of Columbia, though the principal operating agencies are located in the Pentagon. Our standard of judgment in moving people to the Pentagon has
1529 been their immediate connection with operations and their necessity to be near other similar activities of the Air Forces and the Service Forces or the War Department General Staff that are concerned with our operations.

Commissioner ALLDREDGE. May I, Colonel, interject a question there to find out?

Colonel SANDS. I beg pardon?

Commissioner ALLDREDGE. May I interject a question?

Colonel SANDS. Oh, certainly.

Commissioner ALLDREDGE. When you refer to operations, you mean military operations?

The WITNESS. That is right.

By Colonel SANDS:

Q. General, would you distinguish for us the type of War Department operation that is carried on in the Pentagon installations as distinguished from the functions rendered by those now located within the District?

A. We try to distinguish between the two types. We have left in the District of Columbia those activities which are of more or less routine administrative nature. That is not entirely true but the great bulk of the activities that remain in the District of Columbia are the ones that can function more or less by themselves and that have a continuing job to perform that does not demand constant contact with and discussion with the other activities that are engaged in day to day operational matters that can't be run on a routine basis.

1530 Q. And was that general location of branches of the War Department in effect in March 1943 also?

A. That is correct.

Colonel SANDS. The witness is available for further examination or cross-examination.

Commissioner ALLDREDGE. Mr. Smelker, do you have any questions?

Mr. SMELKER. No questions.

Commissioner ALLDREDGE. Does the Navy have any questions?

Lieut. NOER. No questions.

Commissioner ALLDREDGE. Well, the witness is ready for cross-examination.

Cross-examination by Mr. KETNER:

Q. General, have you had any complaint about the adequacy of transportation between the District and these points?

Colonel SANDS. Pardon, I purposely limited the witness' examination so as not to get into the transportation feature. I must certainly object to any cross-examination of that kind. He has been put on to establish the physical location and density of the Army installations on the two sides of the river.

Mr. KETNER. I shall not pursue that question, then.

1531 Cross-examination by Mr. QUIRK:

Q. General, does the Secretary of War have an office in the District of Columbia?

A. He does not.

Q. Not at all?

A. No.

Q. Does the Secretary of the Navy have an office in the District?

A. Well, it is my understanding that he has his office in the District.

Q. The Commander in Chief is still in the District?

A. I presume you are talking of the President?

Q. I am.

A. That is my understanding.

Q. Well, do you want to leave the impression here that there is no personnel in the District of Columbia that is engaged in important activities in connection with the war?

A. Oh, no; that would be very erroneous.

Q. Well, you said that they were engaged mostly in routine work; that was a sort of an exaggeration, wasn't it?

A. No; I don't think so. I was trying to distinguish between the type of office that we move over to the Pentagon and the type that we have been able to leave in the District, and there are some activities in the Army, such as for instance,

1532 part of the job of the Chief of Finance, that are of importance to the war effort certainly, but once you set it up it flows more or less uninterruptedly and they can function by themselves and do not need to be near the head, such activities as our Operations Division and others where you have a great number of changes that take place because of changes in the war situation.

Q. Has the number of employees in the Pentagon Building in the last year decreased or increased?

A. I am afraid I would have to hazard a guess on that answer. I do not know for a fact.

Q. Decreased, hasn't it?

A. Well, I doubt it.

Q. You don't know?

A. That is right.

Mr. QUIRK. That is all I have.

The WITNESS. I might say that the competition for space in the Pentagon and at Gravelly Point has increased during the past year. I know that to be a fact.

By Mr. QUIRK:

Q. Are you in the Pentagon Building?

A. That is correct; yes, sir.

Q. Do you live in the District?

A. I live at Fort Myer.

Commissioner ALLDREDGE. Any further questions?

(No response.)

1533 You are excused, General, Thank you, sir.

The WITNESS. Thank you very much.

(Witness excused.)

Colonel SANDS. That completes the testimony of the War Department.

Commissioner ALLDREDGE. Does the Navy Department have any further testimony?

Lieut. NOYES. Yes; we do, and by way of introduction I might say that with reference to the question of the national transportation policy, it is the position of the Navy Department that the Commission's opinion already contains all the findings that are necessary to support the ultimate finding that the national transportation policy requires the exercise of jurisdiction over these intrastate carriers.

It is our further position that if additional findings are necessary the record already contains substantial evidence to support any additional findings that are required.

However, in response to the Commission's invitation, we do have additional evidence bearing on the question of the national transportation policy.

Now, it is the Navy's position that the national transportation policy as defined by Congress requires a transportation system adequate for commerce and for such services in the national defense, and it is our position that the nature of these Vir-

1534 ginia installations is such that they are the very heart and nerve center of the national defense or more accurately nowadays, I should say the world wide defense in which the Army, Navy and Marine Corps are presently involved, and we feel that Congress has put the Commission under a mandate to consider the national defense, and it has the power and the duty to, as Judge Biggs said with reference to the national transportation policy in the Needham case, it has the power and the duty on the facts which we will show to exercise its jurisdiction over

these interstate carriers. I want to call Commander Sunderland as our first witness.

Commissioner ALLDREDGE. I wonder if the Commander and the rest of you want to relax about five minutes.

Mr. LANE. We do.

(Whereupon a short recess was taken.)

Mr. DEAHL. My name is Milton Deahl, and I am a member of the Arlington County Public Utilities Commission and I would like to present a motion at this time. I will read it, if I may, Mr. Commissioner.

Commissioner ALLDREDGE. All right.

Mr. DEAHL (reading). Comes now the Public Utilities Commission of Arlington County, Virginia, and moves that the hearings before the Commission as called for in the Orders of the Commission, dated May 8 and May 18, be abandoned for the following reasons:

1. The Chairman and counsel of the Commission, to-
1535 wit, Mr. Harry Grant, who has appeared in these proceedings as an intervenor, is by order of Court representing certain defendants in the petition trial now being conducted before the United States District Court for the District of Columbia, and therefore will be unable to represent the Commission at this hearing.

2. The matters set down for hearing are res adjudicata by reason of the judgment of the District Court of the United States for the District of Columbia rendered May 15, 1944.

Commissioner ALLDREDGE. That seeks an abandonment of the hearing, does it not?

Mr. DEAHL. Yes, sir.

Commissioner ALLDREDGE. Well then, it is necessary for me to rule, and I overrule the motion. Now, you may proceed, Lieutenant Norr.

Lieutenant Commander J. E. SUNDERLAND was called as a witness, and being duly sworn, testified as follows:

Direct examination by Lieut. NORR:

Q. Commander, will you state your name and rank, please?

A. My name is J. E. Sunderland; Lieutenant Commander.

Q. Are you on duty with the Bureau of Navy Personnel, Navy Department?

A. That is right.

1536 Q. Are the officers of the Bureau located in Arlington Annex?

A. They are entirely contained there except for one small office of the Chief of Navy Personnel in the main Navy Building, which he occupies part time.

Q. How long have you been on duty with the Bureau, Commander?

A. In July it will be three years.

Q. Are you the assistant administrative officer of the Bureau?

A. That is correct.

Q. In the course of your official duties have you had occasion to become familiar with the functions and duties of the Bureau of Navy Personnel which are carried on at the Arlington Annex?

A. I have.

Q. Commander, insofar as it is compatible with the requirements of Navy security, can you describe for us what are the functions and duties of the Bureau of Navy Personnel as carried on at the Arlington Annex?

A. In brief, the Bureau of Navy Personnel is the personnel department for the Navy, it is the personnel department for the Navy Department in the performance of the functions of handling naval personnel and in the course of daily performance, performs virtually all of the following functions:

It procures the officers and enlisted personnel for the Navy; it administers the vast training program and equipping them to handle their duties in the Navy.

1537 It is responsible for the distribution and assignment of the officers and enlisted personnel of the Navy to their duty stations.

It is responsible for all matters relative to the performance of both officers and enlisted personnel. These matters include discipline, discharge, promotion, and the award of medals and other awards.

It is also responsible for the transportation of the personnel of the Navy and of their dependents.

Among its responsibilities also is the administration of the Navy's welfare program. This contemplates the handling of welfare and recreational activities in the field, the provision for handling all casualty matters, the notification of families, and the assurance that the man himself gets whatever rights are due him; the administration of the family allowance program under the Dependents' Benefit Law, which comes under this section of the Bureau.

One of the big functions of the Bureau in order to permit the performance of the above duties is the maintenance of the records of all officers and enlisted personnel.

By way of indicating a little bit the size of the operation carried on by our Bureau in handling the over 2,700,000 officers and enlisted personnel in the Navy, which includes both male and female members of the service, both the reserve and the regular

1538 Navy, the Bureau each day handles over 100,000 individual

pieces of paper which are received and must be filed in these Navy personnel records, of all personnel.

Commissioner ALLDREDGE. May I ask there whether you stated that you had jurisdiction over the civilian employees?

The WITNESS. No, sir.

Commissioner ALLDREDGE. You do not?

The WITNESS. We have jurisdiction only over the service personnel, Commissioner.

In addition there are over 110 bags of incoming and outgoing mail handled by the Bureau in a given day. We handle 1,500 sets of officers' orders a day, distributing them to new jobs or to the jobs for which they are being inducted into the Navy.

The Bureau is responsible for one-third of the despatched traffic that goes out from the radio center in the Navy Department, which concerns itself with personnel matters and is originated in our Bureau.

In the handling of the dependents' benefit law there are over 7,000 authorizations of family allowance each day, which go out each day.

With respect to what part the Bureau plays in Navy Department functions, it is responsible as stated heretofore for the personnel needs of the Navy; just as a bus will not run without a driver, the Navy would not operate without the personnel which our
1539 Bureau provides and furnishes and places at the disposal of the operating activities of the Navy Department.

Lieut. NORR. I have no further questions of this witness, may it please the Commissioner.

Commissioner ALLDREDGE. Any cross-examination?

Mr. PRETTYMAN. I have just a couple of questions.

Cross-examination by Mr. PRETTYMAN:

Q. The mai Navy Building is in the District of Columbia, is it not, Commander?

A. That is right.

Q. A great many employees, both Navy and civilian personnel, are employed at the main Navy Building?

A. That is right.

Q. And a great many of those employees live within the District of Columbia itself?

A. That is right.

Lieut. NORR. I object to that, your Honor. There is nothing in the direct testimony which indicates where any employees of the Navy live and nothing to indicate that this witness is qualified to testify on that phase of it. It is not within the scope of the direct examination.

Mr. PRETTYMAN. He answered the question.

Commissioner ALLDREDGE. Have you already answered the question?

Mr. PRETTYMAN. He has already answered the question.

1540 He said yes; that is right.

Mr. LANE. Lieutenant, may I ask you, is your objective in putting the Commander on the stand to show that there are very important functions of the Department in the Navy Annex?

Lieut. NORR. That is right.

Commissioner ALLDREDGE. Well, I will have to let it stand. Do you object to the answer standing?

Lieut. NORR. I do not have any objection to any particular question. I do not want to open a line of cross-examination.

Commissioner ALLDREDGE. All right. I think you are right about the cross-examination. If he had not already answered I would have upheld your objection. Any further questions?

Mr. PRETTYMAN. I have no further questions.

Commissioner ALLDREDGE. You are excused, Commander.

(Witness excused.)

Lieut. NORR. The Navy has one more witness, may it please the Commission, Colonel Milton.

Mr. BEALL. I move to strike the testimony of the last witness on the ground that it has no possible connection or relationship to any issue involved in these proceedings.

Commissioner ALLDREDGE. Your motion is overruled.

Colonel MILES S. NEWTON, called as a witness and

1541 being first duly sworn, testified as follows:

Direct examination by Lieut. NORR:

Q. Colonel, will you state your name and rank for the record?

A. Miles S. Newton, Colonel.

Q. Colonel, how long have you been in the Marine Corps?

A. Seventeen years.

Q. How long have you been on duty in the Headquarters Establishment of the Marine Corps?

A. Since last July.

Q. Is the Headquarters Establishment located in the Arlington Annex?

A. Yes, sir.

Q. Are you the administrative officer of the Headquarters Establishment?

A. I am.

Q. Colonel, in the course of your official duties have you had occasion to become familiar with the duties and functions of the Headquarters Establishment as carried on at the Arlington Annex?

A. Yes; I have.

Q. Colonel, insofar as the requirements of military security will permit, will you describe the duties and functions of the Headquarters Establishment of the Marine Corps as carried on at the Arlington Annex?

1542 A. In the Arlington Annex are all of the departments and divisions of the headquarters of the Marine Corps, except the Division of Aviation, which is on Constitution Avenue, and a small identification section *section* in Philadelphia.

That leaves then three major departments and four divisions.

All the officers of the Quartermaster General of the Marine Corps, all the officers of the Paymaster General of the Marine Corps, all of the officers of the Director of Personnel of the Marine Corps.

Smaller offices also of the Division of Public Relations, Division of Plans and Policies, Administrative Division, and the Rehabilitation Division.

Going briefly into the activities of the major departments, first the Quartermaster Department has cognizance over all procurement, storage, and issue of matériel, weapons, munitions, food, and things of that nature.

Also handles transportation of all of this matériel, Marine Corps matériel, and of personnel.

The Paymaster's Department has cognizance over all pay-roll and disbursing activities of the Marine Corps.

The Personnel Department has cognizance over all military personnel, that is, procuring and training of all enlisted men, all reserve officers, the issuing of orders to all officers and en-

1543 listed men, the distribution to the various posts and organizations, and the operation of the personnel classification program.

That of course does not cover all of its activities, but the major ones.

The Marine Corps being not as large as the Army or Navy, is perhaps more centered and headquarters, Marine Corps, is the whole nerve center or heart of the Marine Corps and as I have just stated, it is all located with those two exceptions in the Arlington Annex.

Q. Colonel, you mentioned a division of plans and policies, I believe.

A. Yes; the divisions of plans and policies formulate plans and policies on types and activitation of new military units, contact intelligence of all operations, consideration, and testing of new types of matériel.

Lieut. NORR. I have no further questions of the Colonel.

Mr. LANE. No questions.

Commissioner ALLDREDGE. Colonel Sands, do you have any?

Colonel SANDS. No.

Commissioner ALLDREDGE. Any cross-examination?

You are excused. Thank you, sir.

(Witness excused.)

Mr. SMELKER. If the Commissioner and Examiner please, I now have before me the notes of the Commission's special agent C. L. Hartley, and I will read them to you, and I believe
1544 counsel for the carriers agree that they shall be read. The summaries are as follows——

Mr. QUIRK. We have not seen them.

Mr. SMELKER. Some of you have seen them.

Mr. LANE. I agree so far as the Arlington & Fairfax is concerned, that they be read.

Commissioner ALLDREDGE. Well, let's get it straight. Let Mr. Quirk see them if he wants to.

Mr. QUIRK. I probably couldn't make them out. Mr. Beall wants to see it.

Mr. BEALL. No.

Mr. QUIRK. All right.

Mr. SMELKER. With the consent of Mr. Quirk I will now read them:

"Alexandria, Barcroft & Washington northbound stops were 27; Arlington & Fairfax north-bound stops were 7.

"Alexandria, Barcroft & Washington south-bond stops were 12 and Arlington & Fairfax south-bound stops, none."

That covers the period from 5 p. m. to 9 p. m. on Saturday, May 20.

Mr. LANE. Does it mean that there were discharged south-bound and pick-up north-bound?

Mr. SMELKER. That is right.

Mr. QUIRK. That is at that one point.

Mr. SMELKER. At the Jefferson Memorial stop, and it
1545 means as I understand it the north-bound stops were to pick up passengers and the south-bound stops were to let off passengers.

Mr. LANE. That would not necessarily be true, would it?

Mr. SMELKER. Not necessarily.

Mr. LANE. They were stopped either to pick up or discharge.

Mr. SMELKER. The specific instructions were to get that information.

Mr. LANE. Oh, I see.

Mr. HILL. I understand that was 5 to 9 of this same Saturday of these pictures.

Mr. SMELKER. That is right.

Commissioner ALLDREDGE. Does that complete your testimony, Mr. Smelker?

Mr. SMELKER. That is all for the Commission; yes, sir.

Commissioner ALLDREDGE. Now, how about the Army and Navy. Have you completed your testimony?

Colonel SANDS. Yes, sir.

Lieut. NORR. Yes, sir.

Commissioner ALLDREDGE. May I ask if the——

Lieut. NORR. Now, may I just say this: I think there is a representative here of some employee union that would like to make a statement or ask permission, Mr. Commissioner; I don't know whether this is the proper time.

1546 Mr. SHERMAN. I represent the United Federal Workers of America, and we have been in the hopes——

Commissioner ALLDREDGE. Pardon, better give your name.

Mr. SHERMAN. Robert Sherman. We have been conducting in the past few days a questionnaire on the effect of bus fare rates to the employees in the Pentagon and Gravelly Point area. We have not been able to complete that as yet; we hope to be able to complete it tonight, and I would like to ask permission, if it is in order, to submit the results of that questionnaire to the Commission.

Mr. QUIRK. What is it, what is the nature of it?

Mr. SHERMAN. There are five main points to the questionnaire. One asks the reason why employees came to work for the War Department, whether it was because or mostly because of their willingness to contribute to the war effort, or whether they wanted to earn more money, whether they wanted to live in Washington, D. C., area, or to state any other reason.

The question No. 2 related to how they managed to meet expenses on their income, whether it is sufficient or whether they have difficulty or whether it is impossible to meet such expenses

The third question indicates the relative importance that they attach to the proposed fare reduction.

1547 The fourth question relates to whether the employee would have greater or less difficulty in persuading friends to work for the War Department if the proposed reduction in fares was instituted.

The fifth question relates to their willingness or unwillingness to appear before the Commission and testify.

Mr. QUIRK. Well, Mr. Commissioner and Mr. Examiner, it seems to me that none of the answers to those questions would either be competent or relevant or material to the issues that are involved in this rehearing, and I object to them on those grounds.

Mr. SHERMAN. I wonder if I may explain the rationale behind the questionnaire? We recognized that at the hearings previously

held the War Department and the Navy Department would indicate the importance of the operations connected with the installations in that area. We felt as a union that it was important for the Commissioners to recognize the fact that the operations themselves required competent and full personnel. We hoped to find out whether the reduction in fare would in any way improve the manpower situation for the War Department. In other words, whether it would, under the proposed reduction, whether it would facilitate returning personnel and reduce the turnover, and second, whether it would offer opportunities for increased recruitment of people when they are needed in those areas,
1548 and we feel that it is material to the hearing.

Mr. QUIRK. It is not material to the questions that the Commissioner set down for hearing. There is a bit of evidence on personnel, and my attention has been called to some handbills that have been circulated pretty freely over there by some labor organization. It seems to me they are interested in a drive for membership more than they are in where these people are located.

Mr. HILL. I want to ask, Mr. Commissioner, is the same group that at the time of the previous hearing asked the employees to promote every effort to induce the Commission to decide this case favorably.

Mr. SHERMAN. I think that is a leading question. If rephrased I certainly would be willing to answer.

Mr. HILL. Well, is it the organization that later telephoned asking that the Commission be telephoned, and every effort made to persuade the Commission to decide the case favorably?

Mr. SHERMAN. Yes; because we felt that it was——

Mr. QUIRK. Do you feel that was proper in view of the fact that you are a party to this case?

Commissioner ALLDREDGE. Well, now!

Mr. QUIRK. I think it is very improper, Mr. Commissioner, for a party to a proceeding of that kind to give out handbills dealing with the issues in the matter that has been done.

1549 Mr. HILL. Most assuredly it is contrary to the Commission's rules of practice.

Mr. PRETTYMAN. In addition to the things as to relevancy to other testimony, any compilations made from any such questionnaires would present obviously the question that the questionnaires in themselves would have to be examined, and in view of the nature of the questions asked it seems to me that it would be absolutely essential that there be cross-examination of the person who signed the questionnaire in order that we might arrive at the exact basis of fact.

Commissioner ALLDREDGE. I think that objection is well taken. When did you say you would have these ready?

Mr. SHERMAN. We hope to be able to have them ready for presentation tomorrow.

Commissioner ALLDREDGE. I am going to suggest that you within the five or ten minutes, we will recess and give you an opportunity to discuss that matter with the Commission's attorney, and I will ask him to give me his views about the relevancy of it in connection with these matters that are to be heard on this reopening. You understand it is limited now to certain points, and then I will determine whether to give you a hearing tomorrow.

Mr. HILL. Well, do I understand, Mr. Commissioner, with all due respect to the Commission, that the counsel for the Commission now becomes one with the War and Navy Depart-
1550 ments and that this case——

Commissioner ALLDREDGE. Now, Mr. Hill, he is here representing the Commission, and it has been done ever since we have had a Commission. Now I think that is all I will hear on it.

Mr. HILL. May I ask you——

Commissioner ALLDREDGE. Will you please just defer?

Mr. HILL. May I ask that the council be thrown open to the attorneys for the traction lines?

Commissioner ALLDREDGE. Well, your request is overruled.

Mr. HILL. Thank you very much, Mr. C[illegible]missioner.

Commissioner ALLDREDGE. Now let's proceed. Is the testimony completed for the War and Navy Departments?

Colonel SANDS. Completed for the War Department, sir.

Lieut. NORR. Completed for the Navy Department.

Commissioner ALLDREDGE. Is there any other testimony to be offered?

(No response.)

Now, do Respondents have any rebuttal?

Mr. PRETTYMAN. Capital Transit has no rebuttal to this point, your Honor. We of course do not yet know what will develop.

Commissioner ALLDREDGE. That is right.

Mr. PRETTYMAN. From the offer.

Commissioner ALLDREDGE. Do you have any rebuttal to
1551 the testimony already offered?

Mr. QUIRK. Alexandria, Barcroft & Washington Transit Company has none.

Mr. BEALL. Washington, Virginia & Maryland Coach Company, Incorporated, has none.

Mr. LANE. Arlington & Fairfax Motor Transportation Company has none.

Commissioner ALLDREDGE. We will recess for ten minutes and I will give Mr. Sherman an opportunity to discuss the question just broached with the Commission's Attorney.

(A short recess was taken.)

Commissioner ALLDREDGE. Mr. Smelker, have you anything to say about the matter I asked you to investigate?

Mr. SMELKER. If the Commissioner please, it is the opinion of the legal staff of the Commission that the evidence as suggested by Mr. Sherman in the shape that he has suggested that it would be put in would not be admissible at this time at this hearing.

Commissioner ALLDREDGE. Under the reopened hearing?

Mr. SMELKER. That is right.

Mr. SHERMAN. I would like to take an exception.

Commissioner ALLDREDGE. I will have to reject your tender at this time.

The question of filing briefs is now before us. Do the Respondents want to file briefs?

1552 Mr. LANE. May we consult just a minute, if the Commissioner please?

Mr. KETNER. Will there be a proposed report in this case?

Commissioner ALLDREDGE. Sir?

Mr. KETNER. Will there be a proposed report in this case?

Commissioner ALLDREDGE. No.

Mr. QUIRK. Will there be an oral argument?

Commissioner ALLDREDGE. No, sir; there will be no oral argument.

Mr. QUIRK. If the other side are going to file a brief I think we would like the privilege of filing a reply brief, but I don't believe we are disposed to file an original brief.

Commissioner ALLDREDGE. Not an original brief?

Mr. QUIRK. How is that?

Commissioner ALLDREDGE. No reply brief to an original brief.

Mr. QUIRK. No proposed report, I think under the Commission's rules of practice where there is no proposed report, the reply brief is now proper under the rules.

Examiner CUMMINGS. An alternative.

Mr. QUIRK. Well, that is an alternative.

Examiner CUMMINGS. I do not think it is obligatory.

Mr. QUIRK. Do the other side want to file a brief?

1553 Colonel SANDS. Yes; I think we desire to file a very short brief, insofar as the War Department is concerned.

Lieut. NORR. The Navy will file a brief also.

Commissioner ALLDREDGE. Do Respondents want to file a reply brief?

Mr. LANE. Yes.

Commissioner ALLDREDGE. You would not unduly delay if I gave you that privilege?

Mr. QUIRK. We certainly would not do it on purpose.

Commissioner ALLDREDGE. You would not want sixty days?

Mr. PRETTYMAN. Not so far as the Capital Transit is concerned.

Commissioner ALLDREDGE. Oh, I think you will be granted that privilege.

Lieut. NORR. I would like to make the time as short as possible for both sides because of the importance of the charge, the amount of money involved to the employees.

Commissioner ALLDREDGE. Do I understand the War and Navy Departments desire to file briefs?

Colonel SANDS. Yes; we would like to file a brief, as far as the War Department is concerned, to be directed toward the second question considered at this hearing, namely, the furtherance of the national transportation policy.

Commissioner ALLDREDGE. Well, the privilege would be limited to these questions, the issue under the reopened pro-
1554 ceeding. When will you be ready to file it?

Colonel SANDS. Well, I think we could have a brief ready in a matter of 15 days.

Mr. LANE. If the Commissioner please, do I understand that the briefs are restricted as to these two points? As I understand, this order of May 18 is not so placed upon the Commission; there is no restriction upon the Commission.

Commissioner ALLDREDGE. You are correct. But the reply briefs will be limited to the issues stated in the original briefs.

Mr. LANE. Oh, yes.

Mr. HILL. Oh yes; surely.

Commissioner ALLDREDGE. Could the War and Navy Departments observe June 5th as filing date for their briefs?

Colonel SANDS. I believe that we could, Mr. Commissioner.

Commissioner ALLDREDGE. Will you meet that date?

Lieut. NORR. We will meet that date.

Commissioner ALLDREDGE. All right.

Colonel SANDS. There is just a suggestion here, perhaps the Commission can be advised tomorrow, it may be, that in view of the Navy Department's suggestion, that we will dispense with the privilege of filing a brief. If that should be decided upon, we will notify the Commission and that will thereby eliminate any reply briefs.

1555 Commissioner ALLDREDGE. And notify counsel.

Colonel SANDS. And notify counsel. Just at the present moment I am not prepared to say that we can do that.

Commissioner ALLDREDGE. All right, gentlemen, June 5th will be fixed as the date for filing the briefs for the War and Navy Departments, and any others who file on their behalf.

Now, Mr. Sherman, I will be glad to grant you the right to file a brief in the same way if you want it. Of course, that will be limited to the evidence already in the record, you know.

Mr. SHERMAN. I do not know just yet.

Commissioner ALLDREDGE. I will give you the privilege if you want it.

Mr. SHERMAN. Thank you.

Commissioner ALLDREDGE. Mr. Smelker, do you desire to file a brief?

Mr. SMELKER. I do not think so.

Commissioner ALLDREDGE. Now, how long will respondents want for the reply?

Mr. PRETTYMAN. You have given them fifteen days; give us ten; that makes it June 15th as a good round date.

Commissioner ALLDREDGE. All right, June 15 is fine.

Lieut. NORR. I wonder if we could make it ten days from the date our briefs are filed?

1556 Commissioner ALLDREDGE. That is up to them.

Mr. QUIRK. I have to be out of the City, in Detroit, Cincinnati, and I won't have this record. This record was taken for certain purposes, and assuming it has a purpose, we ought to have the privilege of reading it, and I think the reporter will tell you, if you ask him the question, that it is a question of operators here at this time, and it will be ten or twelve days possibly.

Commissioner ALLDREDGE. Well, the record taken here is for the ordinary record purposes.

Mr. QUIRK. Yes; I assumed that.

Commissioner ALLDREDGE. All right, the Respondents will have until June 15, 1944, to file reply briefs.

Lieut. NORR. I take it that if the War and Navy Departments file no briefs, then no reply briefs will be filed.

Commissioner ALLDREDGE. Be no reply.

Mr. HILL. The Respondents would have the same right to file an original brief, would they not, Mr. Commissioner?

Commissioner ALLDREDGE. No; I did not assume that. I understood that the Respondents wanted an opportunity to decide whether they wanted to file a reply brief.

Mr. HILL. I do not have any present purpose to want to file one, but I did wonder at the moment, and I just wanted the record to be plain as to that point at least.

Commissioner ALLDREDGE. No; I did not contemplate that.

1557 Mr. HILL. Well, I am willing to leave it that way.

Mr. LANE. May we have some indication as to when the record will be ready?

Commissioner ALLDREDGE. Well, Examiner Cummings will ask or request the reporter, to give this preferred attention. Obviously that is all we can do.

Before we close the hearing, Examiner Cummings has suggested that it would be well if we had from the Respondents the exact

routes which their respective busses observe coming into and going out of the District. Now these may be already in the record.

Mr. LANE. They are in the record, I believe, Mr. Commissioner, at least by oral testimony and by maps.

Commissioner ALLDREDGE. Is that true of all the Respondents?

Mr. LANE. Yes, sir.

Mr. HILL. There is a master map in here that shows all of that.

Commissioner ALLDREDGE. Are those routes shown in the orders which were introduced this morning?

Lieut. NORR. I think those orders do show the routes that they follow.

Examiner CUMMINGS. If the orders show the routes I think they are sufficient. The record is a little bit confused about the routes.

1558 Mr. HILL. If you feel that the record is lacking after you have examined it more closely, then we will gladly furnish it.

Examiner CUMMINGS. Well, it is difficult to make much out of those maps. If you can be sure that it is covered in those orders that were handed in this morning, then that is enough.

Lieut. NORR. Those orders would only show the intrastate traffic.

Lieutenant CUMMINGS. Well, that is what we want.

Lieut. NORR. Yes, sir.

Ensign GELANT. They do not show the routes of the Capital Transit.

Commissioner ALLDREDGE. I think they are in the record, the Capital Transit.

Mr. QUIRK. If the Commissioner and Examiner would prefer to have a new statement of these routes of each of these lines, why of course there is no objection except the general objection we have made, to furnishing them. We would be very glad to do it. I think it is in the record, but if there is any doubt about it, we can remove the doubt by furnishing a statement.

Examiner CUMMINGS. I have not seen a copy of those orders, but if they are shown there, I think that would be sufficient.

1559 Mr. HILL. The reporter has them right there, Mr. Examiner.

Exam. CUMMINGS. Are they all alike; this is just one.

Mr. SMELKER. I have not seen them.

Exam. CUMMINGS. It seems to be complete.

Commissioner ALLDREDGE. Is there anything further to be furnished?

Mr. BEALL. May I inquire, if I may, as to when we could expect to get copies of those exhibits that were put in by the Army and Navy?

Lieut. NORR. We will try to get our additional copies under way this afternoon, and we hope to get them to you within a matter of a day or two.

Mr. BEALL. Thank you.

Mr. QUIRK. Mr. Examiner, I notice that the document which is Exhibit 108 for the record does give the District routes of the A. B. & W. specifically, and I assume that is what you want?

Commissioner ALLDREDGE. Yes.

Mr. HILL. May I inquire off the record?

(Discussion off the record.)

Commissioner ALLDREDGE. The hearing is closed.

(The hearing was thereupon concluded at 11:50 a. m., Monday, May 22, 1944.)

1560–1573 Interstate Commerce Commission

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Submitted June 5, 1944.—Decided June 12, 1944

Upon further hearing and reconsideration findings in prior report, 256 I. C. C. 769, that interstate bus fares and bus-streetcar fares between the District of Columbia and the Pentagon Building, Navy Arlington Annex, Army Air Force Annex, Washington National Airport, Va., and intermediate points, are unreasonable (with exceptions) affirmed. Further order entered requiring establishment of fares found reasonable.

Additional appearances: Lt. Col. Thomas E. Sands, Jr., and Major Aubrey T. Palmer for War Department.

Lt. Martin Norr, Lt. Irving L. Goldberg, and Ensign Richard S. Salant for Navy Department.

Raymond Sparks for Capital Transit Company; and J. Ninian Beall for Washington, Virginia and Maryland Coach Company, Inc.

Burt L. Smelker for Interstate Commerce Commission.

Supplemental report of the Commission on further hearing and reconsideration

ALLDREDGE, Commissioner:

In the prior report, 256 I. C. C. 769, we found, with certain exceptions, that the interstate bus and bus-streetcar fares main-

tained by respondents between all points in the District of Columbia, on the one hand, and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex and the Washington National Airport, all in Virginia, on the other hand, were unreasonable.

The present fares between the points above-mentioned are described at pages 771–772 of the prior report. The reasonable fares prescribed were as follows: For local application over bus and bus-streetcar lines of respondent Capital Transit Company (referred to as the Transit Company) fares the same as those maintained within the District of Columbia, viz, 10 cents per single trip, three tokens for 25 cents, and a weekly pass priced at $1.25; for local application over the bus lines of respondents Arlington and Fairfax Motor Transportation Company, Alexandria, Barcroft & Washington Transit Company, and Washington, Virginia and Maryland Coach Company, Inc. (referred to collectively as the Virginia Lines and individually as the Arlington Line, the Alexandria Line, and the Coach Company, respectively) three tokens for 25 cents;[1] for joint application over the Virginia Lines and bus and bus-streetcar lines of the Transit Company, $1.60, valid for 12 one-way trips (equal to 13⅓ cents per trip), including transfer privileges on lines of the Transit Company. We permitted increases in all fares in issue which were less than those approved to the basis of the latter.

Subsequently, respondents and inter ener State Corporation Commission of Virginia contested our order in suits brought before a three-judge District Court in the District of Columbia, and the court set it aside.

As explained in the prior report, the United States Government installations, above-mentioned, are within the commercial zone defined in Washington, D. C., Commercial Zone, 3 M. C. C. 243. This action was taken pursuant to section 203 (b) (7a) (8), which provisions of the law are quoted in the footnote at page 775 of the prior report. The effect of these provisions is, with certain exceptions, to exempt from regulation interstate motor-carrier operations within the defined zone. It is to be noted, however, that under the terms of the law the exemption does not apply if we later find that application of part II of the Interstate Commerce Act "is necessary to carry out the national transportation policy." In the prior report we so found. The exemption likewise does not apply unless "the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or

[1] Continuance of the present cash fare of 10 cents per single trip was approved.

routes in accordance with the laws of each State having jurisdiction." In the prior report we found that respondents were not so engaged in intrastate transportation.

The grounds upon which the court set aside our order were (1) that respondents were lawfully engaged in intrastate transportation over the entire length of their interstate routes and consequently that the proviso above quoted was not applicable and (2) that we had failed to make adequate findings that application of part II to the transportation here under consideration is necessary to carry out the national transportation policy. The court stated that it was unnecessary to pass on other questions raised in the pleadings. Thereafter, we reopened the case for further hearing, limited to the matters passed upon by the court, and for unrestricted reconsideration.

At the further hearing, counsel for respondents and for intervener State Corporation Commission of Virginia appeared specially and filed motions to discontinue the proceeding on the ground that the matters placed in issue were res judicata by reason of the decision of the District Court above mentioned. The motions were overruled by the presiding Commissioner only so far as necessary to enable the hearing to proceed; they have come before us now for a final ruling on their merits.[2] Respondents and intervener thereafter offered no evidence, but their counsel engaged in cross-examination of witnesses appearing in behalf of the War Department and Navy Department and the Commission's Bureau of Inquiry.

1574 In our opinion, the doctrine of res judicata, as applied in the courts, cannot be given unrestricted application to our administrative proceedings in their relation to court proceedings for review of action taken. Tagg Bros. v. United States, 280 U. S. 420, 445, and particularly not without regard for considerations peculiar to the latter. Baltimore & Ohio R. Co. v. United States, 15 F. Supp. 674; Thompson v. United States, 20 F. Supp. 827. Here, among other things, it is apparent that the respondents lose sight of the considerations that, in contrast with the usual subject matter of litigation, the rate and other transportation orders entered in proceedings under the Interstate Commerce Act involve the public interest and that, in recognition of that fact, the Urgent Deficiencies Act, the act specially creating the procedure for testing the validity of such orders, contemplates and provides for expedition throughout. United States v. Griffin, 303 U. S. 226, 233. The respondents, in invoking the doctrine of res judicata, insist on its applicability, not only with respect

[2] A similar motion was filed in behalf of the Arlington County Public Utilities Commission. This was also overruled in the same manner by the presiding Commissioner.

to the court's holding above-mentioned that we had erred in concluding that the transportation involved was not exempt from regulation under section 203 (b) (8) of the Interstate Commerce Act, but also with respect to its holding that we had failed to make adequate findings to support our conclusion that application of the provisions of the act was in any event necessary to carry out the national transportation policy, their contention in this respect being that since the latter holding, as well as the former, was legal, the only "proper procedure for the Commission would be to appeal." Clearly this contention of the respondents, assuming as it does that in no case may we reopen our proceedings in response to holdings of the lower courts of inadequacy of underlying findings in our reports to support a conclusion reached by us, is not only wrong (Thompson v. United States, supra) but also disregards the needless and great delay that would follow from a procedure making appeal to the Supreme Court a prerequisite to the taking by us of the corrective action suggested, or indicated, by such holdings.

As for the respondents' insistence on the applicability of the doctrine of res judicata to the District Court's other determination that we had erred in concluding that the transportation involved was not exempt from regulation under section 203 (b) (8) of the act, we believe that the same considerations, that rate and transportation orders involve the public interest and that expedition is a fundamental purpose of the special procedure for testing their validity, show that the respondents are equally wrong in this. The determination of the court related to the act's basic jurisdiction in the circumstances involved and, similarly as with respect to most other questions of basic jurisdiction, the question determined depended largely on the facts. Where we are convinced that the record upon which the court's determination was reached, or our report, is in need of amplification or clarification, we believe that we may take corrective action and are not restricted to an appeal to the Supreme Court. Cf. Baltimore & O. R. Co. v. United States, supra. The public interest being involved in such a question of jurisdiction, not only as limited to the particular transportation but generally as well, any rule of res judicata or other doctrine which assumes with finality, as against the parties to a case that all of the facts were before the court could, we believe, have little applicability. Moreover, the situation here confirms us in our view of the inapplicability of the doctrine of res judicata; for, if, as contended by the respondents, it were applicable to the District Court's holding with respect to the jurisdictional question, that would have set up a definite obstacle to the reopening of our proceeding to take action responsive to the court's other holding of inadequacy of findings in our former

report. We do not believe that any doctrine having such results, or tending to compel an election of such kind between the courses to be followed, is applicable in connection with proceedings of this kind.

A further consideration is that the two holdings of the District Court—its holding that the transportation involved was exempt from regulations and its holding that the findings in our report were inadequate to support our conclusion that the application of the act to the transportation was in any even necessary to carry out the national transportation policy—involve questions which are closely related and interdependent. The jurisdictional question, though doubtless legal, depends, as above stated, largely on the facts and in such case the courts have emphasized the desirability and, indeed, the need, of having the Commission's judgment on the questions before them. City of Yonkers v. United States, 320 U. S. 685, and cases cited. Accordingly, any rule which would preclude reopening of our proceedings with respect to the jurisdictional question, while manifestly inoperative to prevent reopening as to the other closely related question, is, we believe, by that fact alone, shown to be inapplicable. We are, therefore, of the opinion that we may give consideration to the former as well as the latter question. The motions above mentioned are overruled.

The question of removal of the commercial zone exemption.—The prior report shows that most of the employees at the Virginia installations are in a relatively low income group; that the existing fares between the installations and the District of Columbia are a source of dissatisfaction among the employees and an element entering into separation from the Government service at those points. It is to be noted that the Secretaries of the War and Navy Departments considered that the matter of our assuming authority over the fares in question was of sufficient importance to bring to our attention and ask that an investigation be instituted, which we did on our motion.

Further examination of the record originally made bears out the foregoing statements. It shows, among other things, that most of the employees are in clerical grades, with base annual salaries of $1,440 to $1,620. From semimonthly pay, deductions are made for Federal taxes, retirement, and for war bond purchases. For employees in the $1,440 grade, total deductions each pay day average about $17 and net semimonthly pay $56. Corresponding figures for employees in the $1,620 grade are $20 and $62. A representative group of employees testified to the prevalent dissatisfaction concerning the transportation charges which they are called upon to pay, and reference was made to lesser charges paid by persons for transportation within the District

for greater distances. The testimony was corroborated by a number of personnel supervisors. On further hearing, the Departments adduced evidence which further emphasizes the importance in the conduct of the war of the work performed at the Virginia installations. Offices of the Secretary of
1575 War, the Chief of Staff of the Army, and the heads of the services immediately concerned with the conduct of the war are located in the Pentagon and the Army Annex. Important services of the Navy Department similarly concerned are housed in the Navy Annex. In brief, these buildings may be characterized as the nerve center of the war effort in this country.

The national transportation policy declared in the Interstate Commerce Act is as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declared policy."

Since subdivision (7a) of section 203 (b) provides in effect, that despite the exemption of subdivision (8) of transportation within a "commercial zone" from the provisions of the act, the exemption may be removed whenever we find the same to be "necessary to carry out the national transportation policy," it necessarily follows that the subjecting of such transportation to the act's regulatory provisions, including those with respect to rate or fare regulation, is specially recognized by the act as action that may serve the said national policy, including its specified end of developing, coordinating and preserving a transportation system "adequate to meet the needs of the commerce of the United States * * * and of the national defense." Having this in mind, and read in light of its earlier statements of objectives, including that of encouraging the establishment of

reasonable charges for transportation services, it is plain that the "end" specified by the national policy of a transportation system adequate to meet the needs of commerce and of the national defense, has reference not only to adequacy of service but also to transportation services rendered at reasonable fares and charges. It is further plain that, in view of the very nature of the transportation which it is contemplated that we may remove from the exemption from regulation in furtherance of the national transportation policy, that we must, in effectuating such policy, necessarily give consideration to the circumstances of individual transportation units and to the needs of their patrons.

It is clear that in order to ensure for the transportation here considered fares that do not exceed a level operating against the full efficiency of the important services performed at the Virginia installations in the conduct of the war, it is essential that the fares be subjected to regulation. As above said, it is considered and has been shown that the existing fares are having an effect detrimental to such services, and there can be no assurance against the charging of excessive fares except by subjecting them to regulation.

No agency other than this Commission is empowered to regulate the fares in issue. It is a well established rule that even where the Federal Government does not occupy the field, the States are without power to regulate charges for interstate transportation. Minnesota Rate cases, 230 U. S. 352, 399–401, and cases there cited.

Extent to which respondents are engaged in intrastate or intra-District transportation.—In the prior report we held that the commercial zone exemption authorized in section 203 (b) (8) was not applicable to the transportation here in issue because the Transit Company performed no intrastate transportation in Virginia, the Coach Company, none in the District, and that the other two Virginia companies were engaged only in limited intra-District transportation. We did not, however, set forth a detailed review of the evidence bearing on this subject and believe that it will be helpful now to give detailed consideration to the applicable provisions of the law and the evidence offered at the original and at the further hearing.

As above shown, the provisions of section 203 (b) (8) exempting commercial zones from regulation do not apply unless "the motor carrier engaged in such transportation of passengers over regular or irregular routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction."

As showing that the act treats the term "intrastate transportation" as including intra-District transportation, reference is made to section 203 (a) (8) which provides that "The term 'State' means any of the several States and the District of Columbia."

In order that passenger transportation be intrastate, it may be said that a first, or basic, requirement is that it be physically purely intrastate, that is, transportation of passengers from place to place exclusively within the confines of a single State; it might be that, even then, the passengers, or certain of them, were in fact in course of interstate travel, but, in order to make a start with the proposition that the transportation is intrastate, it must, as stated, first meet the basic requirement of being transportation of passengers from place to place exclusively within one State. Cf. Hanley v. Kansas City So. Ry. Co., 187 U. S. 617, 620; B. & O. S. W. R. Co. v. Settle, 260 U. S. 166, 171; Yohn v. United States, 280 F. 511.

At the original hearing the president and general manager of the Transit Company testified that the company was not engaged in any intrastate operations in Virginia over any of its interstate routes in the area here considered. In other of his testimony he said, among other things, that, so far as he knew, there was no pick-up or discharge of passengers by the company's Pentagon bus lines outside the District of Columbia other than at the Pentagon Building; that the company had no authority to use the lines for short haul of passengers in Virginia; and that it
1576 was its intention to operate between certain points in the District to the Pentagon, conducting "a through express type of service to serve the War Department Building."

The above testimony of the Transit Company's general manager is confirmed by the company's tariffs. Its tariff MP–I. C. C. No. 76 naming the present fare over its R–2 (Memorial Bridge) route contains this rule: "No intrastate passengers accepted." The tariff of the company, MP–I. C. C. No. 77, naming the fare over the Q–2 (Highway Bridge) route contains these rules:

Out-bound from Washington, D. C., to the Pentagon Building no alighting permitted except at the Pentagon Building, and no boarding permitted south of north end of Highway Bridge.

In-bound from Pentagon Building to Washington, D. C., no boarding permitted except at the Pentagon Building, and no alighting south of north end of Highway Bridge.

The record further shows that the two applications of the Transit Company before us for temporary authority to operate between the District and the Pentagon both contain the following statement:

"Although the interstate operations applied for are to be conducted entirely within the commercial zone of Washington, the applicant is not engaged in intrastate transportation of passengers over the entire length of such interstate route or routes, or any part thereof; and does not intend to engage in such intrastate transportation in the State of Virginia."

In a letter dated May 30, 1942, from the president of the Transit Company to the Commission, seeking extension of the effectiveness of temporary authority previously granted, it was said:

"Capital Transit Company is advised by its counsel that there is no doubt as to the jurisdiction of the Interstate Commerce Commission in the premises or as to the validity of said Order and permit, since Capital Transit Company has no operating rights for intrastate operations in the State of Virginia from any Virginia authority, * * *."

In view of the foregoing, it seems to us that the Transit Company is not engaged in any intrastate operations in Virginia, either authorized, or unauthorized, by that State, over its interstate routes between the Pentagon and the District.

At the original hearing, officers of the Virginia companies gave testimony concerning the intra-District operations of those companies, from which we concluded, as above stated, that the Coach Company performed no intra-District operations and the Alexandria Line and Arlington Line only limited operations. Evidence presented by the Departments on further hearing establishes the correctness of these conclusions. This evidence consists of orders[3] of the Public Utilities Commission of the District, which specify the authorized routes and stops.

It is shown that the Coach Company is authorized to operate over all four of the bridges between the District and Virginia. The orders do not authorize any intra-District transportation, and the evidence shows that it is not engaged in such transportation. Accordingly, we are of the view that the Coach Company is not engaged in any intrastate operations in the District of Columbia, either authorized, or unauthorized, by the District over its interstate routes between the Pentagon and the District.

The Alexandria Line and the Arlington Line are each authorized to operate over the Memorial and Highway Bridges. Over the Memorial Bridge routes they are not authorized to engage in any intra-District transportation. Over the Highway Bridge routes they are also not authorized to engage in such transportation, except between authorized stopping points, one on in-bound

[3] Nos. 1881, 2153, 2197, 2428, 2507, 2508, 2509, and 2686.

and one on out-bound movements, opposite the Jefferson Memorial, and authorized stops north of Maine Avenue. In other words, the companies are prohibited from engaging in any intra-District transportation in the area north of Maine Avenue. The distance between the intersection of Fourteenth Street and Maine Avenue SW., and the terminal of the Alexandria Line at Twelfth Street and Pennsylvania Avenue NW., is about 1 mile over the route of that company. The only authorized stops south of Maine Avenue are those opposite the Jefferson Memorial.

Accordingly, in view of the fact that the Alexandria Line and the Arlington Line are wholly without authority from the Public Utilities Commission of the District of Columbia to engage in intra-District transportation over their Memorial Bridge routes and that, over their Highway Bridge routes, they are without such authority in the area within the District above described, and in view of the further fact that the testimony confirms generally that their actual operation conforms to the authority granted them, we are of the opinion that the said lines are not engaged in intrastate transportation, either authorized, or unauthorized, by the District, over the entire length of their interstate routes herein involved. The foregoing conclusions are further supported by action of the Virginia Lines which have applied for and secured various authority from us in numerous proceedings under Part II, the nature of which is indicated by the titles which follow, all decided subsequent to Washington, D. C., Commercial Zone, supra. Arlington & F. Motor Transp. Co. Extension—Virginia, 8 M. C. C. 573; Washington, Va. and Md. Coach Co., Inc., Ext.—Arlington, 12 M. C. C. 379; Fares between Arlington County, Va., and D. C., 17 M. C. C. 267; Arlington & F. Motor Transportation Co.—Pur.—Wash., Va., and Md., 25 M. C. C. 461; Washington, Virginia and Maryland Coach Co., Inc.—Notes, 25 M. C. C. 763; 36 M. C. C. 279, 301; 39 M. C. C. 408; Alexandria, B. & W. Transit Co. Ext.—Washington Airport, 30 M. C. C. 618; Washington, Virginia and Maryland Coach Co., Inc.—Stock, 38 M. C. C. 430; Washington, Virginia and Maryland Coach Co., Inc., Ext., 41 M. C. C. 860; No. MC–1800 (Sub-No. 12), Alexandria, B. & W. Transit Co. Ext.—Fairlington (not printed, decided January 13, 1944); No. MC–18133 (Sub-No. 12), Arlington & F. Motor Transp. Co. Ext.—Seminary Road (not printed, decided January 13, 1944); No. MC–18133 (Sub-No. 13), Arlington & F. Motor Transp. Co. Ext.—Fairlington (not printed, decided January 13, 1944).

1577 Status of fares prescribed in prior report as commutation fares.—By section 217 (b) of part II, the provisions of

section 22 of part I are made applicable to common carriers by motor vehicle. So far as here pertinent, section 22 provides:

"That nothing in this part shall prevent * * * the issuance of * * * commutation passenger tickets * * *"

This provision, of course, related to the issuance of commutation tickets by the railroads. The origin, history, and development of commutation transportation service and fares are given lengthy consideration in the Commutation Rate case, 21 I. C. C. 428, 431–443. It is there shown that this kind of transportation service antedates the steam railroad and was recognized as long ago as the day of the stage coach. It was adopted and further developed by railroads. Subsequently, with the advent of the electric railways, they also provided commutation service and fares. The precedent established by these agencies of transportation has been followed by motor carriers of passengers. In all this time, however, it appears that a usual characteristic of what was understood to be commutation traffic was transportation between separate communities as distinguished from transportation within a single community. In other words, the term had been applied generally to suburban and interurban but not to urban transportation, at least not to transportation throughout an urban area. We have held that the transportation here under consideration is essentially urban in character. Another historic characteristic of commutation fares is that they apply only to a particular class of traffic. Accordingly, we are of the opinion that the prescribed fares cannot properly be regarded as commutation fares. They are, rather, the predominant type of fare regularly and customarily maintained by respondents for transportation over their lines in this area, the single fare being the exception.

If, nevertheless, the fares prescribed may correctly be considered as commutation fares, we think it is clear that we have authority to prescribe fares of that character. The thought that we do not have such authority may be traceable to statements to that effect contained in old decisions rendered prior to the time that authority was conferred upon us to prescribe any kind of transportation charges for the future, which statements have been inadvertently repeated or paraphrased in reports of recent years. See Passenger Fares and Surcharges, 214 I. C. C. 174, 250; Bristol v. Central R. Co. of New Jersey, 218 I. C. C. 654, 656. Another possible source of confusion is that section 22 of the original act of 1887 read:

"That nothing in this act shall *apply to* * * * the issuance of * * * commutation passenger tickets * * *" [Italics supplied.]

The original act was changed in 1889 to read as first above shown. The necessity of distinguishing early decisions dealing with commutation fares was pointed out in the Commutation Rate case, supra, page 436.

We have frequently had occasion to emphasize that commutation service and fares are a necessity, not a luxury. The truth is that they are as much a matter of daily concern to many thousands of people as bread, or shoes, or clothing and this has always been the case. In the Commutation Rate case, supra, it was said, pages 442–443:

"Suburban communities have grown into existence on the theory voluntarily accepted by the carriers as well as by the public that one who makes daily use of an agency of transportation between his place of business and his home must necessarily be accorded a special and a low rate. This theory is firmly fixed in the history and traditions of transportation by rail and must therefore be regarded as embraced in the law under which such transportation is regulated."

And in Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, it was said, page 435:

"In fixing reasonable fares for this particular commutation traffic elements other than cost which determine reasonableness must not be glossed over. Value of the service to the habitual traveler, if often vaguely concealed, is none the less a real factor; and fares tending to put the use of the railroads beyond the reach of the average commuter of a particular region or which might tend to compel on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be viewed in the light of the carrier's obligation as a common carrier designed for community service."

Likewise, in Proposed Increases in New England, 49 I. C. C. 421, it was said, page 447:

"When it is considered that the development of our suburban communities has the beneficial effect of reducing the concentration of population in large cities, and that the welfare both of the city and of the suburb depends in large measure upon the existence of efficient and reasonably inexpensive means of transportation, it is obvious that some form of commutation or trip ticket may be regarded as an economic and social necesity."

Needless to say, we have prescribed or approved commutation fares in numerous cases. In addition to cases previously cited, see, for example, the Commutation Rate case, supra, supplemental report, 27 I. C. C. 549; Commutation Fares on N. Y., N. H., and H.

R. R., 101 I. C. C. 703; Commutation Passenger Fares, 181 I. C. C. 21; Rhode Island Commutation Fares, 253 I. C. C. 383; compare Pennsylvania R. Co. v. Towers, 245 U. S. 6.

We do not regard as sound the view that we are lacking in authority to require the establishment of commutation fares in the first instance, though possessing the authority to determine standards of reasonableness and lawfulness otherwise so long as such fares are voluntarily maintained. Such a view, in our opinion, is paradoxical and it gives predominance to form over substance contrary to the accepted principle of statutory construction. We do not believe it was the legislative purpose thus to indulge in a mere equivocal gesture.

1578 We find and conclude:

1. That the transportation here considered is not excluded from the application of the provisions of the Interstate Commerce Act by section 203 (b) (8) thereof and that we have jurisdiction over said transportation.

2. That the application of the provisions of the Interstate Commerce Act to the said transportation is necessary to carry out the national transportation policy.

3. That the findings and conclusions in the prior report should be, and they hereby are, affirmed.

4. That in view of the existing emergency, the fares found reasonable should be made effective as soon as practicable and that our order should provide for a period of not less than 10 days' notice instead of the usual 30-day period.

An appropriate order will be entered.

PATTERSON, Chairman, dissenting:

My dissent to the prior report, 256 I. C. C. 769, 787, stated that this Commission does not have jurisdiction (1) over transportation performed by the electric street railway lines of the Transit Company, and (2) to prescribe a level of single-line or joint-line fares dependent upon the purchase at a time of more than one ticket or token.

The grounds upon which the court set aside the Commission's order were (1) that respondents were lawfully engaged in intrastate transportation over the entire length of their interstate routes and consequently the exemption provision in section 203 (b) (8) was not applicable, and (2) that the Commission had failed to make adequate findings that application of part II to the transportation under consideration was necessary to carry out the national transportation policy. In the circumstances the court stated it was unnecessary to pass on other questions raised in the pleadings.

This report differs from the prior report concerning the transportation question raised under section 203 (b) (8). With respect to this, it was stated in the prior report, page 776, "As to the Transit Company and the Coach Company, there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District, *it is reasonably clear* that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy." [Italics supplied.] With this I agree.

In the instant report there is a specific finding that the considered transportation is not excluded from the application of the Act by section 203 (b) (8) thereof. There is also a finding that the application of the provisions of the Act to the said transportation is necessary to carry out the national transportation policy. In view of the first finding, the second finding seems to be unnecessary. However, if it is necessary, it is no better supported than was the similar finding in the prior report.

In the concluding paragraph of this report, just before the findings, the majority brush aside as unsound the view that the Commission is lacking authority to require the establishment of commutation fares in the first instance, though possessing the authority to determine standards of reasonableness and lawfulness otherwise so long as those fares are voluntarily maintained. The carriers may do things voluntarily which the Commission is without authority to compel them to do, but once having been established we may require them to be reasonable and to avoid unjust discrimination or undue prejudice and preference. Within the zone of maximum and minimum reasonableness a carrier may establish a rate which would be subject to our determination as to its lawfulness, but we would not have authority in the first instance to order a carrier to establish, for example, a rate which would be less than reasonable maximum.

In my dissenting expression I set forth the reasons for my disagreement with the conclusions reached by the majority. What I there said applies with equal force to this report which affirms the prior findings.

I am authorized to state that Commissioner Miller joins in this expression.

1579. At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 12th day of June A. D. 1944

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

ORDER

It appearing, That on January 18, 1944, the Commission made its report, 256 I. C. C. 769, and entered its order in this proceeding requiring the establishment of the fares found reasonable therein;

It further appearing, That said order was set aside by decision and order of the District Court of the United States for the District of Columbia and that by order dated May 18, 1944, said proceeding was reopened for further hearing limited to matters specified in said order and for reconsideration, unrestricted;

And it further appearing, That a full investigation of the matters and things involved has been made and the Commission, on the date hereof, has made and filed a supplemental report on further hearing and reconsideration containing its findings of fact and conclusions thereon, which said supplemental report and the prior report are hereby referred to and made a part hereof:

It is ordered, That respondents Capital Transit Company, Washington, Virginia and Maryland Coach Company, Inc., Arlington and Fairfax Motor Transportation Company, and Alexandria, Barcroft & Washington Transit Company, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before August 1, 1944, upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 217 of the Interstate Commerce Act and thereafter to maintain and apply to the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex, and Washington National Airport in Virginia and Virginia intermediate points, on the other, fares which shall not exceed the fares found reasonable in said report, 256 I. C. C. 769, dated January 18, 1944.

It is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

1580 In the District Court of the United States for the District of Columbia

Civil Action No. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, 36TH AND M STREETS NW., WASHINGTON, D. C., PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

[File endorsement omitted.]

Complaint to set aside order of Interstate Commerce Commission and for temporary stay filed March 11, 1944

I

Jurisdiction of this Court is invoked under the provisions of U. S. C., Title 28, Sections 41 (28) and 43–48 inclusive of said Act.

II

Plaintiff is a corporation duly organized and existing under the laws of the District of Columbia, and, under franchises granted by Congress, is engaged in the intrastate transportation of passengers for hire by street railway, and bus within the District of Columbia and also conducts special operations in interstate commerce between the District and the adjacent State of Maryland; and, by bus in interstate commerce only, between two fixed termini in the District and the Pentagon Building in the state of Virginia, as hereinafter more fully described; for which operations plaintiff is entitled to charge fair and reasonable rates of fare for the use of its property by the public.

III

In May, 1942 and January 1943, at the urgent request of the War Department, plaintiff began the interstate operations
1581 of its two bus routes, here involved, between fixed termini in the District of Columbia, over streets therein designated by the Public Utilities Commission of the District of Columbia, and the Pentagon. Said interstate operations are conducted by virtue of special requests and in connection with said special requests the Interstate Commerce Commission issued temporary certificates, which will expire on December 31, 1944. These interstate operations have been carried on continuously by the

plaintiff since said dates. The rates of fare established by plaintiff at the beginning of its operations, and now existing, for interstate transportation on each of the routes between fixed termini in the District of Columbia and the Pentagon are five cents cash; plaintiff continuing to charge the regular fare for intrastate transportation on its street railway and bus lines in the District.

IV

In April 1943 the Secretary of War, with the concurrence of the Secretary of the Navy, requested the Interstate Commerce Commission in writing, to investigate the reasonableness of the fares and charges exacted by plaintiff on its interstate Pentagon bus routes, and the fares and charges exacted by the Alexandria, Barcroft and Washington Transit Company, the Washington, Virginia and Maryland Coach Company, Inc., and the Arlington and Fairfax Motor Transportation Company, hereinafter sometimes called the Virginia respondents, for the transportation of passengers in interstate commerce between points in the District of Columbia and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, all in the State of Virginia, none of which, except the Pentagon, is plaintiff authorized to serve. Responsive to that request, the Interstate Commerce Commission on July 3, 1943, entered an order instituting an investigation of the reasonableness of the fares and charges described.
1582 Hearings were held before one commissioner and an examiner. Argument was heard on both the jurisdictional and factual issues before the entire Commission. On January 18, 1944, a majority of the Commission made its report, findings and order, a copy of which is attached hereto and made a part hereof as exhibit "A." In the aforesaid report and order, the Commission (three commissioners dissenting) required plaintiff to establish fares, for its interstate operations between the Pentagon Building and all points served by its street railway and bus lines in the District of Columbia, equal to and not in excess of the present intrastate fares charged by plaintiff for the transportation over its intrastate lines wholly within the District of Columbia, and to establish joint fares with the Virginia respondents between the four federal installations in Virginia already described, and all points served by the street railway and bus lines of plaintiff in the District of Columbia.

V

The aforesaid report, findings, conclusions and order of the Commission required plaintiff to establish the new rates of fare

on or before March 13, 1944, and to file and post said rates not less than fifteen days prior thereto; plaintiff and the other respondents filed with the Commission petitions for reconsideration, reargument and suspension of the report, findings, conclusions and order; and on February 14, 1944, the Commission denied the petitions but extended the effective date of the order to April 13, 1944; copies of the plaintiff's petition for reconsideration and the order of February 14, 1944, are attached hereto as Exhibits B and C, respectively.

VI

Plaintiff has invested substantial sums of money in property used and useful in its interstate Pentagon operations; and by evidence adduced at the aforesaid hearings, plaintiff showed that its operating expenses, solely in connection with such interstate operations, amounted to more than $193,000 for the first
1583 seven months' operations in 1943. Such operating expenses for the entire year 1943 were in excess of $300,000. Plaintiff's evidence further showed that its operating expenses would, in the near future, be increased substantially by an increase of five percent (plus) in employees' wages, when and if the National War Labor Board approved such increase. That increase has been allowed and plaintiff's operating expenses have been increased to the extent asserted. And plaintiff further showed that under the existing fares the interstate Pentagon operations resulted in a net loss from such operations alone of approximately $37,000 for the first seven months of 1943. For the entire year 1943, such operations resulted in a net loss of approximately $50,000.

VII

The said order of the Commission of January 18, 1944, is null and void, being confiscatory and in violation of the Fifth Amendment to the Constitution for the United States, in that it would deny plaintiff any compensation for the use of its property in the public service in said interstate Pentagon operations, and would deny plaintiff any reimbursement for some $350,000 per year expended by it from its funds in said operations; and it is otherwise confiscatory and in violation of said Fifth Amendment.

VIII

The said order of the Commission is illegal and void because discriminatory in violation of law, in that, among other things, (a) it prescribes a fare of 8⅓ cents or less for transportation between any point in the District and the Pentagon by one respondent company and the same fare (8⅓ cents) for transportation

over only a part or fraction of the same or similar routes and in similar service by other respondent companies; and (b) it prescribes a fare of 8⅓ cents for passengers of one respondent company between points in the District and the Pentagon and a fare of 13⅓ cents for passengers of the other respondent companies between the same points over the same or similar routes and
1584 in similar service; and (c) it prescribes a lower fare for those passengers using a rush-hour service than for those using the service at other hours; and said order is otherwise discriminatory in violation of law.

IX

The said order of the Commission is illegal and void because beyond the jurisdiction and statutory authority of the Commission in that, among other things, (a) it is in violation of Part II, Section 216 (e) of the Interstate Commerce Act (49 U. S. C. Sec. 316 (e)); (b) it prescribes fares of and otherwise applies to, the electric street railway lines of this plaintiff, (c) it requires the issuance of commutation tickets, (d) it requires joint fares between the respondent companies, (e) it assumes jurisdiction to regulate local and joint fares in connection with street railway lines serving a municipal area only, (f) it prescribes and requires joint fares when no through routes have been established by agreement, arrangement or otherwise; (g) it assumes jurisdiction over wholly intrastate operations of plaintiff, such operations being beyond and outside the authority granted this plaintiff by the Commission for interstate operation; (h) it is based upon the erroneous conclusion that Section 216 (e) of the Act authorized the Commission to require the establishment of through routes and joint fares whenever deemed by the Commission to be necessary or desirable in the public interest; (i) plaintiff is not a common carrier, within the meaning of Act, from all points in the District; and it is otherwise illegal as beyond the jurisdiction of the Commission.

X

The said order of the Commission is a rate order without adequate findings by the Commission in support thereof.

XI

The findings of the Commission are without substantial evidence, or any evidence in support thereof and are
1585 contrary to the evidence, in that, among other things, (a) the Commission found that the evidence bears out the belief that transportation charges were an important underlying

cause of a large turn-over of employees at the Virginia installations, (b) the Commission found that the record warrants the conclusion that the existing charges are higher than the persons using the interstate services of the respondents can reasonably be called upon to bear, (c) the Commission found it to be the practice to maintain a uniform zone fare in other areas where the physical layout bears a general resemblance to that involved in this proceeding, (d) the Commission found that the cost of the interstate Pentagon operation of plaintiff, as computed by plaintiff, is somewhat high; (e) the Commission found that through routes are now in effect; (f) the Commission found that rush-hour service similar to that to and from the Pentagon is also performed by plaintiff within the District; and other findings and recitations of facts are without substantial evidence or any evidence and are contrary to the evidence.

XII

The said order of the Commission is illegal and void in that, among other things, it is avowedly based upon an extension of the District fare zone, whereas by Act of Congress the District of Columbia constitutes a fare zone and the fares therein are limited by said Act so as to produce not more than a fair return upon the property used and useful in the service within the said District.

XIII

The said order of the Commission is illegal, null and void in that it is based upon numerous erroneous legal conclusions and is arbitrary and capricious, in that, among other things, the Commission concluded (a) that while cost of service is an important element in measuring transportation charges, it is not the sole or controlling consideration, failing to conclude that cost of service, not otherwise recoverable by the Company, is a minimum below which regulatory authority cannot fixe fares
1586 under the terms of the Fifth Amendment to the Constitution; (b) that ability of passengers to pay is an element in determining transportation fares; (c) that the national transportation policy as defined in the Act applies to the determination of the rates involved in this proceeding; and it is based upon other erroneous legal conclusions.

XIV

The said order of the Commission is arbitrary and capricious and therefore illegal and void in that (a) it would require plaintiff to maintain its present District of Columbia fares for trans-

portation between all points in the District of Columbia and the Pentagon, whereas the Public Utilities Commission of the District of Columbia has authority by Act of Congress to change the present fares between all points within the District of Columbia, and the order of the Commission here involved is impractical and impossible to carry out in the event of a change in the fares within the District; (b) it finds 13⅓ cents to be a reasonable fare between any point in the District of Columbia and the Pentagon if the passenger is transported by one of the Virginia respondents and the plaintiff, but finds that fare to be unreasonable when the passenger is transported between the same points by plaintiff alone; (c) it makes no reference to two five-cent fares of respondent companies from points in, or on the boundary of, the District and the Virginian installations; and it is otherwise arbitrary and capricious.

XV

Plaintiff further alleges that the order of the Commission is arbitrary, capricious and confiscatory in that it requires plaintiff to establish a joint fare with the Virginia respondents not to exceed 13⅓ cent per one-way trip, without any consideration and without any finding by the Commission as to the division of that rate between plaintiff and the Virginia respondents, which should and will inure to them respectively and without any evidence bearing upon that subject. In fact, the Commission gave no consideration to the question whether the joint fare prescribed
1587 is sufficient to permit a division which will leave to plaintiff and to the Virginia respondents a fair return on the value of their respective properties which may or will be used by each of them in the performance of the services contemplated by the joint fare prescribed.

XVI

The report, findings, conclusions and order of the Commission, in the particulars mentioned and in many other particulars, are not supported by the evidence, are contrary to the evidence, result in unlawful discriminations, were made and entered arbitrarily and unreasonably and in excess of the statutory powers of the Commission, and are based on improper and illegal distinctions, considerations and interpretations of the Interstate Commerce Act, as amended. By reason of the premises and the assumption of jurisdiction by the Commission over the services provided by plaintiff, plaintiff has been denied due process of law, contrary to the provisions of the Fifth Amendment to the Constitution for the United States and will suffer great and ir-

reparable injury in that plaintiff will be, unless said order be set aside, required to carry passengers to and from the Pentagon, over the temporarily authorized interstate routes, without any charge therefor, resulting in an annual net loss of about $350,000; and plaintiff's property, used and useful in the Pentagon operations, will be required to be used to give such service to the public without any compensation therefor, notwithstanding plaintiff's investment of a substantial sum in such property and the expenditure of about $300,000 per annum in operating expenses for the conduct of such operations.

Plaintiff's fares for intrastate operations within the District of Columbia, which do not include the interstate Pentagon routes, are established by the Public Utilities Commission of the District of Columbia and its losses on the Pentagon operations cannot be recovered through the intrastate rates so established, since neither its property used and useful in the Pentagon operations nor
1588 expenses incurred therein can be considered by that Commission. The Interstate Commerce Commission by law is not responsible in damages for such loss or injuries to the plaintiff, nor to the public, and since losses are not compensable in damages, even a temporary cessation of the existing fares for the Pentagon operations would cause irreparable loss and injury and would be equivalent to a final adjudication in the Commission's favor despite the numerous issues of law and fact which can only be determined by a full hearing on the merits.

XVII

A certified copy of the testimony, exhibits and complete record of the proceedings before the Commission is filed contemporaneously with the filing of this complaint.

Wherefore, plaintiff being without adequate remedy at law, respectfully prays:

First: That upon the filing of this bill of complaint the presiding judge of this Court shall call to his assistance in the hearing and determination thereof two other judges, of whom at least one shall be a circuit judge;

Second: That process may issue against the defendants, the United States of America and the Interstate Commerce Commission, and that after not less than five days' notice to the Interstate Commerce Commission, and the Attorney General of the United States, as provided by law, a hearing be held, that an interlocutory decree be issued staying and suspending said order of the Interstate Commerce Commission;

Third: That upon final hearing of this cause a permanent injunction issue decreeing that the order of the Interstate Com-

merce Commission is unlawful, null and void, and that it be set aside and annulled, and that its enforcement, execution and operation be forever enjoined, and that the United States of America and the Interstate Commerce Commission, their officers and
1589 agents, and others acting for them, be restrained from taking any steps or instituting or prosecuting any proceeding to enforce the aforesaid order, and that the plaintiff be given such other, further and general relief as may be proper in the premises.

CAPITAL TRANSIT COMPANY,
E. D. MERRILL.

[Duly sworn to by E. D. Merrill; jurat omitted in printing.]

Attest:

WM. B. BENNETT,
Secretary.

E. BARRETT PRETTYMAN,
E. Barrett Prettyman,
F. G. AWALT,
F. G. Awalt,
RAYMOND SPARKS,
Raymond Sparks,
822 Connecticut Avenue,
G. THOMAS DUNLOP,
G. Thomas Dunlop,
929 E Street NW., Washington, D. C.
Attorneys for Plaintiff.

Copy of foregoing complaint received this 11th day of March, 1944.

EDWARD M. CURRAN.
United States Attorney for the Dist. of Col.

1590 *Exhibit A to complaint*

Interstate Commerce Commission

No. 28991.

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

Submitted November 9, 1943.—Decided January 18, 1944

Passenger bus fares and bus-streetcar fares between the District of Columbia and the Pentagon Building, Navy Arlington Annex, Army Air Force Annex, Washington National Airport,

and intermediate points, found unreasonable, with exceptions. Reasonable fares prescribed.

E. Barrett Prettyman, F. G. Awalt, G. Thomas Dunlop, Robert E. Quirk, Franklin K. Lane, Wilmer A. Hill, and W. A. Whittlesey for respondents.

Major General Myron C. Cramer, Colonel Elbert M. Barron, Colonel Martin G. White, Captain Paul S. Davis, Lieutenant Everett H. Mathews, and John H. Ferguson for Secretary of War and Secretary of the Navy; and Harry G. Tarrington for Secretary of Commerce and Civil Aeronautics Administration.

H. E. Ketner and Frederick G. Hamley for State Corporation Commission of Virginia; and J. M. Goode and Harry A. Grant for Public Utilities Commission of Arlington County, Va.

Florence S. Volkman for Local No. 1, United Federal Workers of America, C. I. O.

REPORT OF THE COMMISSION

ALLDREDGE, Commissioner:

This is an investigation instituted at the request of the Secretary of War, concurred in by the Secretary of the Navy, into the reasonableness and the lawfulness otherwise of fares for the transportation of passengers between all points in the District of Columbia, hereinafter referred to as the District, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, hereinafter referred to as the Pentagon, Navy Annex, Army Annex, and Airport, respectively, and sometimes collectively referred to as the Virginia installations, on the other hand. Respondents are the Capital Transit Company, the Washington, Virginia and Maryland Coach Company, Inc., the Arlington and Fairfax Motor Transportation Company, and the Alexandria, Barcroft & Washington Transit Company hereinafter referred to as the Transit Company, the Coach Company, the Arlington Line, and the Alexandria Line, respectively. Respondents, other than the Transit Company, are also sometimes referred to herein collectively as the Virginia Lines.

The Pentagon is located adjacent to U. S. Route No. 1 nearly 2 miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the 14th Street Highway Bridge. The Navy Annex is about 2 miles south of the Virginia end of the Memorial Bridge, and about 1 mile west of the Pentagon. It is reached from the
1591 Memorial Bridge, over Arlington Ridge Road, which does not run by the Pentagon. The Army Annex is on the Mt.

Vernon Memorial Highway about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

The Transit Company furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the down-town business section of the District, on the one hand, and points in Virginia, on the other hand. All four of the respondents serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington Line. The Army Annex and the Airport are served only by the Alexandria Line. All of the respondents operate lines over both the Memorial Bridge and the Highway Bridge. Their interstate operations are covered by appropriate temporary permits or certificates of convenience and necessity issued by us. The routes over which respondents operate in the District were prescribed by the Public Utilities Commission of the District of Columbia, hereinafter referred to as the District Commission.

Pentagon service by the Transit Company is operated only during the morning and afternoon rush hours and the transportation performed is practically 100 percent from the District to the Pentagon in the morning and from the Pentagon to the District in the afternoon. During the remainder of the day equipment employed in the Pentagon service, which is not needed for other use, remains idle. Rush-hour service similar to that to and from the Pentagon is also performed by the Transit Company within the District.

Virginia installations served by the Alexandria Line and the Arlington Line are located on some of the regular routes of those lines to and from points beyond, although operation over additional mileage, which assumes considerable proportions in the aggregate, is necessary in order to reach points of actual loading and unloading at such installations. Regularly scheduled busses serve these points throughout the day and additional busses are operated during rush hours. These lines have a heavy volume of passenger traffic to the District during the morning rush hours and from the District during the afternoon rush hours. The traffic here considered is in the reverse direction during those respective periods. Under the system of staggered working hours now in vogue it is apparent that, to a certain extent, the same busses may be used in transporting Government employees between Virginia and the District, in opposite directions, during the same rush-hour period.

The Coach Company is a minor factor in the transportation here considered. It serves only the Pentagon and that service is not over a regular route but consists of a few out-of-route trips during the morning and afternoon rush hours.

Fares of the Transit Company for its service in the District are 10 cents, three tokens for 25 cents, or a weekly pass which is sold for $1.25. Free transfers are issued between all company lines. This company operates two bus lines to the Pentagon. One, which is routed over the Memorial Bridge and is designated as the R–2 line, was inaugurated in May 1942. Its District terminal was originally at 23rd and C Streets NW., but subsequently was changed to the present location at 19th and C Streets, NW. The other, which is operated over the Highway Bridge and is designated as the Q–2 line, was inaugurated in January 1943. Its District terminal is at 7th Street and Constitution Avenue
1592 NW. The permits issued by us for operation of these lines are temporary and will expire December 31, 1944, unless extended. Over the R–2 line the distances from 19th and C Streets to the Virginia end of the Memorial Bridge and to the Pentagon are 1.62 and 3.5 miles, respectively. Over the Q–2 line the distances from 7th Street and Constitution Avenue to the Virginia end of the Highway Bridge and to the Pentagon are 2.08 and 3.6 miles, respectively. The Transit Company is not authorized to handle intrastate traffic over the portions of its lines located in Virginia.

The Transit Company's Pentagon service, which is its only operation in Virginia, was instituted at the urgent request of the War Department in order to furnish needed transportation. The nature and extent of this service were worked out in negotiations between the company and the Department. At that time the Transit Company notified the Department that it felt it necessary to make an extra charge for the service.

Over the R–2 line the fare is 5 cents each way, without restriction or limitation. The fare over the Q–2 line from or to any point in the District served by the Transit Company, is a District fare plus 5 cents. This means that every passenger using the Q–2 line must hold a weekly pass, in which case he pays 5 cents for the ride between the District terminal and the Pentagon, or he must pay a 10-cent cash fare or a token in addition to the 5 cents which total payment, in connection with appropriate transfer arrangements entitles him to through transportation between the Pentagon and any point on the Transit Company's lines in the District. The explanation offered for the difference in application of the fares over the two routes is that the Q–2 line extends farther into the District than the R–2. However, from the re-

spective terminals the distances over the two lines are almost the same.

From 12th and F Streets NW., in the heart of the business district and within two or three city blocks of the terminals of all of the Virginia Lines, the distances over the Highway Bridge are about 3.7 miles to the Pentagon, 4.9 miles to the Navy Annex, 4 miles to the Army Annex and slightly farther to the Airport. Over the Memorial Bridge the distances are somewhat more than a mile longer.

A uniform one-way fare of 10 cents is maintained by the Virginia Lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including the Virginia installations, with the single exception that the Alexandria Line sells a book of 26 tickets for $1.95, or 7.5 cents each which are good for transportation between its District terminal and the Army Annex. Service is operated by the Arlington Line between Rossyln, Va., and the Pentagon and Navy Annex, and between the Memorial Bridge and the Navy Annex; and the Alexandria Line operates a service between the Memorial Bridge and the Navy Annex. On these lines the one-way fares are 5 cents.

For a passenger who rides on the Pentagon Lines of the Transit Company or on the Virginia Lines, and also on District streetcars or busses in traveling between the Virginia installations and points in the District the minimum total charge is a District fare plus 5 cents, a 7.5 cent ticket, or 10 cents, depending upon the installation, the route, and whether or not the travel is during rush hours.

The Virginia Lines have full rights to, and do, engage in intrastate transportation over their entire lines within Virginia,
1593 under the regulatory authority of the State Corporation Commission of Virginia. Under authority of the District Commission the Alexandria and Arlington Lines perform certain intrastate transportation between a limited number of points in the District, but they are not authorized to render general urban service between all District points along their lines. For the intrastate service which these lines perform in the District the fare prescribed by the District Commission is 10 cents. The Coach Company is not authorized to, and does not, perform intrastate transportation in the District.

The total personnel employed at the Virginia installations is upwards of 40,000, about 30,000 of whom are employed at the Pentagon. Somewhat less than half of this personnel resides in the District and travels back and forth each work day. The average number of passengers per day transported at interstate fares for two representative days in August 1943, counting each

trip of each passenger from or to the District as one passenger, was as follows:

	Pentagon	Navy Annex	Army Annex	Airport
Transit Company	19,101			
Alexandria Line	6,378	2,325	[1] 2,484	1,999
Arlington Line	2,079	895		
Coach Company	352			

[1] Of this total, 1,278 paid 10-cent fare and the others used the 7.5-cent tickets.

The percentage relation of the revenue derived by respondents from traffic between the District and the Virginia installations to their total revenue is less than 2 percent for the Transit Company, about 15 percent for the Alexandria Line, between 25 and 30 percent for the Arlington Line, and less than 1 percent for the Coach Company. Respondent's traffic volume between the District and the Virginia installations fluctuates with changes in the number of people employed at such installations, but it is now substantially greater than it would be if wartime restrictions which limit the use of private automobiles were not in effect.

All operations of the Arlington Line between the District and Virginia are within its 10-cent fare zone. Operations of the other Virginia lines to and from the District extend beyond their 10-cent fare zones, to and through other zones, with an additional fare of 5 cents per zone.

In addition to serving the District, the Transit Company operates a number of bus lines between the District and suburban and rural communities in Maryland. For transportation beyond the boundary of the District into Maryland, the fares are on a zone basis. In most instances the first zone beyond the District boundary ranges from slightly under to slightly over 1.5 miles in extent, and the zone fare is 5 cents. Certain of the first zones are approximately double the size of the 5-cent zones referred to, in which instances the zone fare is 10 cents. On many of the lines operating in Maryland commutation tickets are sold at the rate of 12 for 48 cents or 100 for $3 where a 5-cent zone is involved, and 3 for 25 cents or 4 for 30 cents where a 10-cent zone is involved. In addition, on several of the suburban lines weekly passes similar to the $1.25 pass used in the District, are sold at prices ranging from $1.50 to $2, depending upon the number of zones in which they may be used. These passes entitle the holder
1594 to an unlimited number of rides in the District and within the zone limits to which they are restricted. Fares within the zones located in Maryland were prescribed by the Public Utilities Commission of Maryland.

For many years there has been a dispute as to the exact location of the boundary line between the District and Virginia. Un-

certainty with respect to this matter was referred to in this proceeding. We cannot here undertake to determine the exact location of the boundary line. On this record and for the purposes of this proceeding we conclude that the installations are in Virginia.

Question also was raised as to our authority to prescribe through routes and joint fares between points served by the urban bus lines of the Transit Company and the Virginia Lines. We are of the opinion that we have such authority under the provisions of section 216 (e) of the act.

Our jurisdiction over electric railways was considered by the Supreme Court in Omaha Street Railway v. Interstate Commerce Commission, 230 U. S. 324, and United States v. Village of Hubbard, 266 U. S. 474. (Cf. also City of Yonkers v. United States, — U. S. —, decided January 3, 1944.) In the case first cited it was held that street electric railways engaged in interstate passenger transportation were not comprehended within the meaning of the word "railroad" as used in section 1 and, therefore, that we were without jurisdiction to regulate the fares of a street railway between Omaha, Nebr., and Council Bluffs, Iowa. Our decision had been rendered prior to the amendment of June 18, 1910, which provided that the Commission was not empowered to establish any through route or rate, fare, or charge between street electric passenger railways not engaged in transporting freight and railroads of a different character. This provision is now embodied in section 15 (3) of the act.

In the second case above cited the Court held that section 1 of the act conferred general jurisdiction upon us to regulate interurban electric railroads engaged in interstate passenger operations. We had theretofore exercised such jurisdiction, respecting which the Court said:

"The correctness of the Commission's action in assuming jurisdiction over the interurban roads is confirmed by the action of Congress which, in recent amendments of the Act to Regulate Commerce, limited, in respect to certain subjects, the authority over them."

The Court then proceeded to point out the subjects referred to, in respect of which our jurisdiction had been limited and, among them, was the authority to require the establishment of through routes and joint rates. These limitations are contained in part I of the act. There is a similar limitation in respect of through routes and joint rates in section 307 (d) of part III. The latter part was added to the act in 1940. But there is no similar limitation in section 216 (e) of part II. Part II was added to the act in 1935.

The Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. It conducts bus operations throughout the District and in adjacent territory. The total mileage operated by its busses and street cars is about the same. These operations are commingled and blended. A uniform fare applies to both and transfers are interchangeable between street cars and busses. About 62 percent of the gross revenues of this company is derived from street car operations and 38 percent from bus transportation.

1595 In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in Wisconsin Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, said (p. 588):

"Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

Accordingly, we hold that we have jurisdiction to require the application of the fares herein found reasonable to the combined bus-streetcar operations of the Transit Company and to those operations and the bus operations of the Virginia Lines.

Our jurisdiction over the fares here under consideration was challenged on the basis of the provisions of section 203 (b) (8) of the act, pertinent portions of which and of paragraph (7a) which immediately precedes paragraph (8), are reproduced in the margin.[1] It will be noted that, subject to certain terms and conditions, the provision in question makes the act inapplicable to the interstate transportation of passengers within a municipality, or between contiguous municipalities, or within a zone adjacent to and commercially a part of such municipality. In

[1] (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * *.

(7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to:

(8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction.

Washington, D. C., Commercial Zone, 3 M. C. C. 243, division 5 found that the territory in which the Virginia installations are located was part of the Washington, D. C., commercial zone. It also will be noted, however, that the proviso to the quoted provision renders it inapplicable, insofar as the transportation of passengers is concerned, in instances where the carrier is not lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate routes in accordance with the laws of each State having jurisdiction. As previously noted, 1596 the Transit Company and the Coach Company are not authorized to, and do not engage in the intrastate transportation of passengers in Virginia and the District, respectively, and the other Virginia Lines have only limited intrastate rights in the District and do not engage in intrastate transportation between all points along their lines in the District.

As to the Transit Company and the Coach Company there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration.

The War and Navy Departments, hereinafter referred to as the Departments, offered considerable evidence intended to show the dissatisfaction of their employees with the fares which they are required to pay for transportation between the District and the Virginia installations; and to indicate the large turnover in personnel which is alleged to be due to such dissatisfaction. This evidence serves to show that the Departments and their employees have a real and substantial interest in the proceeding. We recognize that they have such an interest and it will not be necessary to discuss the evidence in detail.

The Departments take the position that the fares between points in the District and the Virginia installations should be the same as the fares at present applicable over the lines of the Transit Company between points in the District. The United States Government is the largest employer in the District. As the result of the increase in Government personnel due to the war, more office space was necessary, which resulted in the construction of the Pentagon as well as other installations on the Virginia side of the river. In view of their proximity to the District and the

mass movement of employees to and from them each day, it is contended that they are as much a part of the business community of the District as if they were physically located within its boundaries. If they were so located the local fares of the Transit Company would apply to them. People who live and work in large centers of population generally are able to travel between their places of residence and employment for a single fare. It is urged that the mere fact that the travel here considered involves passage across a political boundary lines does not warrant a departure from this general practice.

Reference was made by the Departments to several cities in various parts of the country where local fares apply to and from certain points beyond the city limits. On the other hand, the record contains an exhibit showing a number of instances with respect to cities in the eastern part of the country where the local fare applies within the city and higher fares in varying amounts, made on zone bases, apply to and from nearby communities. The details with respect to the circumstances and conditions surrounding the fares mentioned are not shown.

1597 A computation based upon information obtained from responses of 9,500 employees at the Pentagon and the Army Annex to a questionnaire distributed by the Department shows that the average one-way distance traveled by such employees over respondents' lines between their residences in the District and the installations mentioned is 6.21 miles. This is considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District, and compares favorably with the distances from a number of selected points within the District to various military establishments in the District where military personnel and civilian employees of the Departments are assigned to duty. Consequently, the Departments urge that anything higher than a District fare is unreasonable for the transportation of persons employed at the Virginia installations between their places of employment and their places of residence in the District; and that the collection from such passengers of fares higher than those for similar or longer rides in the District results in unjust discrimination and undue prejudice.

1598 The Departments' contention with respect to the unreasonableness of the fares assailed for the average ride of their employees between the Virginia installations and their District residences was supported by testimony of a civilian consultant to the Transportation Corps of the Army who is president of a company furnishing bus and rail passenger transportation in the Philadelphia, Pa., suburban area. He expressed the opinion, without supporting data, that for operations of the character here considered, fares which would produce a revenue of about 1.25

cents per passenger mile would be reasonable. For the average travel of 6.21 miles above referred to such a revenue would be produced by a fare of 7.76 cents. Another witness presented certain cost computations which purport to show that the cost to the Transit Company for transporting passengers between their places of residence in the District and the Pentagon is 7.06 cents per passenger.

An exhibit presented by the Transit Company purports to show the results of operations of the Pentagon lines for the first seven months of the year 1943. In this exhibit the operating revenues and operating expenses which actually accrued on the lines in question were used, and they were also charged with their proportionate share of other operating expenses which could not be directly assigned. This exhibit shows the total number of passengers carried as 3,590,491; total miles operated, 427,663; total revenue at 5 cents per passenger, $179,524.55, equal to revenue per bus mile of 41.98 cents; and total operating expenses, including depreciation and taxes other than income taxes, $193,617.59, equal to 45.28 cents per bus mile and 5.39 cents per passenger. This showing indicates a net loss, without any return on investment, of $14,093.04, or .39 cent for each passenger carried.

The Departments dispute the correctness of these figures. According to their computations the revenue on the Pentagon lines for the seven-month period was $205,074, and the operating expenses $128,267, indicating a profit of $76,807. The difference between the revenues as shown by the Transit Company and the Departments is due to the fact tha the Departments divided the through fare from the passengers' residences in the District to the Pentagon, by way of the Q–2 line, between the lines operating to and from the Q–2 terminal in proportion to the respective mileages. This resulted in allotting more than 5 cents per passenger to the Q–2 line, and less than the District fare to the lines transporting the passengers to the Q–2 terminal. Assuming that these operations may be considered independently it is proper to compute the revenue over both of those lines on the basis of 5 cents per passenger notwithstanding the restrictions placed around the application of that charge on the Q–2 line. In the Departments' computation of operating expenses certain erroneous basic data admittedly were inadvertently employed. It will be unnecessary to discuss the details. Analysis of the data of record leads us to the opinion that the cost as computed by the Transit Company is somewhat high, while the Departments' figure is too low, and that the actual cost per passenger very closely approximates 5 cents. These cost computations make no allowance for return on investment, but it also should be noted that they cover the entire operations of the Transit Company's Pentagon lines,

whereas a part of the transportation performed by those lines is within the District. The cost of operation of these lines is only a portion of the cost of the through operation here considered. Since the traffic originates or terminates on practically every bus or streetcar line operated in the District the costs are merged with those of the District operations and may not properly be considered as those of an independent operation. We have observed on numerous occasions that cost of service is an important element in measuring transportation charges but that it is not the sole or controlling consideration. We have given the cost evidence due weight in arriving at our ultimate conclusions.

1599 The usual and accepted basis for passenger fares in urban communities is a group or zone adjustment under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be. Where such an adjustment is in effect there must be a limit to the size of the zones within which the same fare will apply and the boundaries must be fixed and definite. In the present instance the situation is complicated by the fact that there are two separate and overlapping zone adjustments. Insofar as the Transit Company is concerned, the primary or base zone at present is the District, and the District Commission, whose regulatory jurisdiction is confined to that area, prescribed or approved the present fares. In the case of the Virginia Lines, on the other hand, the 10-cent base zone lies principally in Virginia and fares within that portion are subject to regulation by the State Corporation Commission of Virginia. This zone also extends far enough into the downtown section of the District to include the District terminals of the Virginia Lines. Intrastate fares in this portion are subject to regulation by the District Commission and fares between the terminals and points in Virginia are subject to the exclusive jurisdiction of this Commission.

With respect to the Virginia Lines, it has already been pointed out that fares between the District and the Virginia installation apply to and from points in zones ranging from 6.5 to 8 miles in extent. These zone fares are not attacked as such. The service rendered by these lines in serving the Virginia installations is part of general through service to and from points beyond. The records of the companies are not kept in such manner as to permit a satisfactory segregation of the revenues and expenses in connection with passenger traffic between the District and the Virginia installations. In view of the time and money which would have had to be expended in making special studies upon which to base such a segregation, and of the probability that the results

obtained would be of questionable value, no such studies were required to be made.

The proposal of the Departments contemplates, in substance, that, for fare-making purposes, the portion of Virginia in which the installations considered are located shall be included with the District in a single zone and that the District fares shall apply between any two points within such zone regardless of whether the service is performed entirely by any one of the respondents individually, or by the Transit Company in connection with any one of the Virginia Lines. Such territory in Virginia as would be added to the present District base zone and the territory in the District now included in the 10-cents base zones of the Virginia Lines, would, with respect to the transportation embraced in this proceeding, be subtracted from those zones of those lines. No change would be made in the present fare zones of the Virginia Lines in respect of service between Virginia residential areas and the Virginia offices.

If we should take action here, which would have the practical effect of extending the District fares to include the Virginia installations, respondents assert that they foresee a distinct probability of demands for similar action with respect to Government installation located in nearby Maryland and to populous suburban communities in that State, many of whose residents are employed in the District and travel back and forth each day.

Another objection raised by respondents is that extension of the District fares to include the Virginia installations would result in a difficult regulatory problem because of the overlapping jurisdiction of this Commission and the District Commission.

1600 In March, 1943, in response to a report and recommendation made to them by the Washington Regional Committee of Defense Transportation Administrators, the Transit Company and the Virginia Lines formally agreed to the establishment between the Virginia installations (not including the Airport) and points in the District of a joint fare of $1.60 for 12 one-way trips, equal to 13⅓ cents per trip. This fare was to be sold in the form of ticket books valid for 60 days. The proposal was contingent upon cancellation of the 5-cent and 7.5-cent fares, hereinabove mentioned, and the effectiveness of the proposed 13⅓ cent fare was to be restricted to the duration of the emergency or until December 31, 1944, whichever date should be the earlier. A stipulation of the proposal was that none of the companies agreed that the proposed 13⅓-cent fare is reasonable. The proposal was never made effective because of the opposition by the War Department and the Office of Price Administration. On oral argument counsel for the Arlington and Alexandria Lines reaffirmed the willingness of those companies to establish the 13⅓-cent fare but they desire

permission to do this voluntarily. They oppose the issuance of an order. This fare is the same as the present combination cash-token fare of the Transit Company and also the same as the combination of the token fare approved herein of the Transit Company and a 5-cent fare presently charged by the Arlington and Alexandria Lines between the south end of the Highway Bridge and the respective installations.

The record shows that respondents have experienced a large increase in traffic during the present war emergency, but in opposition to any reduction in their fares respondents emphasize the fact that present conditions, particularly insofar as they are affected by restrictions upon the use of private automobiles, are abnormal and subject to change on short notice. They also presented evidence showing the difficulties and rising costs involved in obtaining equipment, repair parts, and supplies, and in keeping an adequate force of employees to maintain and operate their busses. In this connection particular reference was made to proceedings now pending before the War Labor Board involving proposed increases in the wage of bus operators which, if granted, will substantially increase operating costs. The Virginia Lines are concerned not only about the direct effect of a reduction in the fares here considered, but also about the support that such action would afford for an attack upon other fares, particularly those from and to residential areas in Virginia to and from the District and the Virginia installations.

Because of objections made by respondents, we have not given consideration to evidence offered by the Departments showing respondents income and rates of return on investment or value.

CONCLUSIONS AND FINDINGS

The making of transportation rates or fares on a group or zone basis is not an uncommon practice. Measured by distance alone a certain degree of inequality is naturally inherent in such a system. The same rate or fare is charged for short distances as well as for the longer ones within the same group or zone, and from a point in one group or zone to a point in another the rate or fare may be higher for a short distance than that between points in the same group or zone. The existence of situations of this kind does not in itself indicate any legal impropriety in such an adjustment of rates or fares. The important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn.

1601 We are unable to accept respondents' contention that a proper demarcation line for the application of the District

fares is the political boundary between the District and Virginia. To do so, we believe, would amount to resting our decision herein upon a merely fortuitous circumstance which has little or no bearing upon the issue as to the reasonable limits of the base zone. We and is the same in all essential characteristics as the transportation and the conditions under which it is performed.

This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line and is the same in all essential characteristics as the transportaton between residential areas of the District and commercial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. In the case of the former, the movement is in vehicles loaded to utmost vehicle capacity and for relatively short distances, while the latter is characterized by longer hauls and less utilization of vehicle capacity although, under present conditions, practically all urban and suburban bus lines are heavily loaded during rush hours. It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic. These roadways consist in large part of one-way traffic lanes, and they are without impediments commonly encountered on city streets, such as grade intersections, traffic lights, left turns, and resultant congestion. Large and expensive improvements and additions have also been made in the traffic arteries on the District side of the Potomac. Respondents have the use of these new and improved facilities in other operations conducted by them.

We are unable to accord much weight to apprehensions of respondents that if the District base zone is extended, demands will be made for a similar extension between the District and other points in the vicinity. Each case that comes before us must be decided on its own merits and upon the particular circumstances shown to exist. In the event of a formal proceeding involving other fares, it will be our duty to inquire carefully into the circumstances, but of those circumstances we are not informed on this record. The decision herein must be predicated also upon the facts and circumstances presently known. We cannot anticipate radially increased costs or falling off of traffic on other abrupt and decided changes. In such eventualities, respondents are at liberty to petition for modification of our findings and order.

We do not think that extension of the District fare zone should be denied because of overlapping jurisdiction with the District Commission and resultant regulatory difficulties. In such circumstances, cooperation with State authorities is authorized by Section 205 (f), part II of the act. The record shows it to be the practice to maintain a uniform zone fare in certain other areas where the physical layout bears a general resemblance to that before us here, for example, between and within Kansas City, Mo., and Kansas City, Kans. Similarly, the zone fare in that situation is also subject to more than one regulatory authority.

1602 The primary reason set forth by the Departments for the institution of this investigation was the large turnover of employees in the Virginia installations. It was the thought that the transportation charges were an important underlying cause. The evidence bears out this belief, although, doubtless, there are other important causes. The persons using this service, like others who utilize public vehicles, are, for the most part, in a relatively low income class. The record warrants the conclusion that the existing charges are higher than they should reasonably be called upon to bear. It is elementary that value of the service, ability to pay, or what the traffic will bear, is an element properly entering into the fixation of reasonable transportation charges. We know of no reason why that principle is not applicable here.

So far as the Alexandria and Arlington Lines are concerned, it is shown that they have reaped a particularly important advantage from this traffic, which makes for economical and profitable operation. Formerly their traffic was unbalanced, but they now have an important volume of counter-flow traffic, an advantage which is rather unique in the business of urban or suburban transportation.

Section 216 (e) of the act authorizes us to require the establishment of through routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia Lines are necessary and desirable in the public interest.

We further find that the bus fares and the bus-streetcar fares of the Capital Transit Company in issue are unreasonable in those instances where, and to the extent that, they exceed the fares now maintained within the District of Columbia, which latter fares, including all transfer privileges, we find to be reasonable for application to and from the Pentagon Building and intermediate points. All fares of the Capital Transit Company in issue which are less than the approved fares may be increased to the latter basis.

We further find that the local fares of the Arlington and Fairfax Motor Transportation Company, Alexandria, Barcroft & Wash-

ington Transit Company and Washington, Virginia and Maryland Coach Company, Inc. between the respective Virginia installations and the terminals of those companies in the District of Columbia, and intermediate points, are unreasonable to the extent that they exceed a fare of three tokens for 25 cents, equal to 8⅓ cents per one-way trip, provided, however, that the present cash fare of 10 cents per single trip may be continued. The local fare of 7.5 cents of the Alexandria, Barcroft & Washington Transit Company between the Army Air Force Annex and the District terminal of that company may be increased to the basis herein approved.

We further find that the combination bus and bus-streetcar fares for multiple trips of the Capital Transit Company and the Virginia Lines, above mentioned, between the Virginia installations and points in the District of Columbia and intermediate points are unreasonable to the extent that they exceed a fare of $1.60 valid for one-way trips, equal to 13⅓ cents per one-way trip, which fare, including transfer privileges on the lines of the Capital Transit Company, we find to be reasonable for the joint service indicated. The approved fare may be evidenced in the form of tokens or ticket book valid for 60 days or both.

1603 Except as stated in the foregoing findings, we find that the fares in issue are not unreasonable or otherwise unlawful. In view of the existing emergency, we find that the fares found reasonable should be made effective as soon as practicable. The order will therefore provide for not less than 15 days' notice instead of the usual 30-day period. An appropriate order will be entered.

MAHAFFIE, Commissioner, concurring:

I concur in the report of the majority herein. I consider it important that the jurisdictional questions presented be determined. This proceeding presents questions of importance relating to a coordinated system of transportation for the daily handling of large numbers of passengers, particularly during congested periods of traffic. For the two-day test period in August 1943 a total of 35,613 passengers were handled each day between the 4 points in Virginia and the District. To the respective points they were: Pentagon, 27,910; Navy Annex, 3,220; Army Annex, 2,484; and Airport, 1,999. The amount of the fare prescribed is important. The manner of payment and collection also is of importance, particularly when so many passengers must be handled in rush periods. Difficulties that may arise from the quantum of the fare and the manner of its collection are shown by our reports in Passenger Fares of Hudson & Manhattan Railroad Company,

227 I. C. C. 741, 255 I. C. C. 649, 256 I. C. C. 269, and 256 I. C. C. 507.

I am not satisfied that our findings herein afford the best available solution of the problem, either as to the amount of the fares prescribed or the manner in which they are to be paid. A fare of 8⅓ cents for transportation over the Transit Company for the comparatively long distances for which it must apply between points in the District and the Pentagon seems to lack something in reasonableness when contrasted with the same fare of 8⅓ cents prescribed for the comparatively short distances over the Virginia Lines between the Virginia installations and their termini in downtown Washington. The findings do not appear to me to be as practical as they should be, particularly when viewed from the passenger's standpoint. The passenger from the District using the Transit Company to the Pentagon is to have the through service for 8⅓ cents, whereas the passenger from the District who uses the Transit Company and any of the so-called Virginia lines to any of the Virginia installations, including the Pentagon, must pay 13⅓ cents.

Instead of the amounts prescribed and the manner indicated for their collection, I think a better solution would be the prescription to and from any of the Virginia installations, together with all intermediate stops in Virginia, of a through fare of 10 cents to apply over the Transit Company or over the Transit Company and any of the Virginia lines from and to all points in the District.

I am authorized to state that Commissioner Porter joins in this expression.

1604 SPLAWN, Commissioner, concurring:

The principal issue is whether the Virginia installations may be included as a part of the base zone now coextensive with the District of Columbia or should be treated as within an additional zone. With the rapid development of the Federal government in recent years, the great expansion of the older departments and the creation of numerous agencies it no longer was possible to accommodate these activities in a few buildings. As a consequence, it is a matter of common knowledge that about 15 years ago there began a tremendous expansion in the construction of Federal office buildings, most of which were located along Constitution and Pennsylvania Avenues and in or near the Mall. Some, such as the Bureau of Standards had been placed several miles from the downtown section.

The outbreak of the present war necessitated a further large increase in the number of Federal employees in the metropolitan area. Numerous commercial buildings of various types were leased, and temporary office space was hurriedly constructed.

Many new buildings were located as near as practicable to the downtown area, but others were somewhat scattered throughout the District. Along with a consequent expansion in nongovernmental activities, serious mass transportation problems were created, but hastily expanded facilities were able to meet these demands with the relief afforded by staggered office hours.

Under these conditions the District is treated by the District Commission as one zone, but expanding functions of the War and Navy Departments necessitated utilization of office space in nearby Virginia. The Pentagon building and other Virginia offices here considered, instead of being placed at some point near Mt. St. Albans, the Soldiers' Home or in southeast Washington, were placed near the downtown area obviously with a view to convenience of accessibility to other departmental offices and the availability of space for their construction. This appears to have been a very fortunate circumstance from the standpoint of economy of operation of the transit companies serving both the District and suburban areas in Virginia.

The persons employed in these buildings represented that much additional traffic. Although many were already in government service when they were moved to the new buildings, the space thus released was occupied by others. The volume of traffic was greatly increased without the necessity for substantial change in the existing routes of the transit lines in and near the District. Instead of burdening existing routes, transfer facilities, and congested traffic arteries, ideal transportation conditions were provided in the shuttle movement without stop to and from the Pentagon. Moreover, there was ample space around the Virginia offices for parking buses during the day, thus eliminating the expense of trips to and from garages. It would appear the buildings hardly could have been located on available space within the District which could have been served as conveniently and inexpensively as are the Virginia locations. These circumstances are quite advantageous to the transit companies and in my opinion the record warrants the expansion of the common fare zone here required.

JOHNSON, Commissioner, dissenting in part:

I do not agree with the majority finding that the present District fares are reasonable for application between all points in the District and the Pentagon over the Transit Company's lines. I would find reasonable $1.60 for 12 one-way trips, equal to 13⅓ cents per one-way trip, which is the same as the majority finds reasonable for joint application over the Transit Company and Virginia lines between all points in the District and the Virginia

installations. I agree with Chairman Patterson that a reasonable joint single trip fare over the bus lines of the Transit Company and any of the Virginia lines should not exceed 15 cents.

1605 PATTERSON, Chairman, dissenting:

This Commission is without jurisdiction (1) over any transportation formed by the electric street railway lines of the Transit Company, and (2) to prescribe a level of single-line or joint-line fares dependent upon the purchase of more than one ticket or token at a time.

With respect to (1), an urban or suburban street railway is not subject to our jurisdiction because it is not a "railroad" within the meaning of part I of the Act. An interurban electric railway, which is a "railroad" within the meaning of part I, is subject to our jurisdiction with respect to its interstate fares. The distinction is clearly stated in Omaha Street Ry. v. Interstate Commerce Commission, 230 U. S. 324, decided June 9, 1913, and has been since consistently observed by the Commission and by the Courts. An urban or suburban street railway is local and for the use of a single community, even though that community be divided by a State line or parts of it are under different municipal control. It transports passengers from street to street, or from city to suburbs. An interurban electric railway, on the other hand, runs through the country from town to town and transports passengers or freight, or both, for long distances. The Supreme Court specifically recognized this distinction in United States v. Village of Hubbard, 266 U. S. 474.

Streetcar lines of the Transit Company lie almost wholly within the District of Columbia. A few extend into nearby Maryland suburbs. In every respect they meet the definition of a street railway and in no respect, the definition of an interurban electric railway. This is more manifest if we consider the streetcar lines located entirely within the District, which are the only streetcar lines of the Transit Company dealt with in the findings and order of the majority.

Even if the streetcar lines of the Transit Company constituted an interurban electric railway and thus a "railroad" within the meaning of part I, we have had conferred upon us no authority to prescribe joint fares between such lines and those of a motor carrier. We have heretofore held that a railroad and a motor carrier may voluntarily establish joint fares, but that we may not require them to do so. This is consistent with sections 15 (3) and 216 (c) (e) from which authority to require the establishment of joint fares between railroads and motor carriers was deliberately omitted.

The majority say that because the streetcar and bus operations of the Transit Company have been commingled and blended that it is impractical effectively to exercise our statutory authority over the interstate bus fares of the Transit Company without also exercising authority over the street-railway operations of that company. Accordingly, they decide that we have authority over such street-railway operations. This is an interpretation of legislation which became legislation itself.

There is no such commingling or blending of the streetcar and bus traffic as to render the two inseparable. Even if there were, that would not justify the arbitrary extension of our jurisdiction to a streetcar operation to which the Act does not apply.

The action here taken by the majority will constitute a precedent for the assumption, under similar circumstances, of jurisdiction to regulate local and joint fares in connection with street-railway lines serving municipalities throughout the country.

160C As to (2), it is my opinion that the tokens or tickets which respondents will be required to sell come within the definition of "commutation tickets" as that term is used in the Act. Section 22 of part I, which is made applicable to motor carriers by section 217 (b) of Part II, permits, but does not require, the issuance of commutation tickets. We have always found that so long as commutation fares are maintained they must be reasonable and impartially applied. We have never heretofore found that we have authority to require their establishment in the first instance. Weber Club & Intermountain Fair Assn. v. O. S. L. R. Co., 17 I. C. C. 212, Commutation Rate Case, 21 I. C. C. 428. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96; Reduced Rates, 1922, 68 I. C. C. 676, 729; Passenger Fares and Surcharges, 214 I. C. C. 174, 251.

If we have power to require establishment of the fares above referred to, we also have power to require the railroads to initiate the sale of tickets in wholesale lots for local or joint transportation at a smaller sum per ticket than a reasonable single-trip fare. We have never claimed or exercised such power. I do not think we have it.

I would find that a reasonable joint single-trip fare over the bus lines of the Transit Company and any of the Virginia Lines should not exceed 15 cents. Also, if I considered that we had the authority which the majority here asserts, I would approve the level of the token or ticket fares prescribed in connection with the Virginia Lines.

I would not, however, approve the present District fares as reasonable for application between all points in the District and the Pentagon over the Transit Company's lines. Th finding results in the unwarranted enlargement of the District fare zone beyond

its natural, logical, political, and reasonable boundaries. It is an unjustifiable extension of the District intrastate basis of fares to an enlarged interstate operation. It makes probable the necessity for similar treatment of nearby suburban communities in Maryland which are served by the Transit Company. It requires that company to perform an extended service involving substantial additional costs, without compensation. It unduly prefers one group of patrons of the Transit Company, namely, those who go to and from the Pentagon during rush hours, to the detriment of all other patrons of that company, in that it accords the former a special, greater, and more valuable service than the latter, at the same cost. It also accords to the former a fare that is approximately 60 per cent of that prescribed to the Pentagon over other routes and to the other Virginia installations, including the adjacent Navy Annex, over all routes. There is, and can be no justification for such disparity.

The majority apparently believes that, as the Transit Company is financially able to absorb the cost of operating its Pentagon lines, it should be required to do so. If a reduction in that Company's net revenues is justified, it would be much more equitable to accord all of its patrons some reduction in fares rather than to single out its Pentagon passengers for special, favorable treatment.

It is my opinion that the fares prescribed for application by the Transit Company to and from the Pentagon are without lawful authority insofar as their application to streetcar transportation is required; that they are unreasonably low; that they are unduly preferential; and that they may well bring about the deterioration, if not the elimination, of the service which the Company is at present rendering on its Pentagon lines, having in mind that those lines are now being operated under temporary authority only.

I am authorized to state that Commissioner Miller joins in this expression.

1607 ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 18th day of January, A. D. 1944

No. 28991

PASSENGER FARES BETWEEN DISTRICT OF COLUMBIA AND NEARBY VIRGINIA

It appearing, That by order entered July 3, 1943, in the above-entitled proceeding, the Commission entered upon an investiga-

tion into and concerning the reasonableness and lawfulness otherwise of the fares of respondents herein for the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand, with a view to making such findings in the premises and prescribing such just, reasonable, and otherwise lawful, local and joint fares as are within the powers of the Commission under the Interstate Commerce Act, and as the facts and circumstances appear to warrant;

And it further appearing, That a full investigation of the matters and things involved has been made and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That respondents, Capital Transit Company, Washington, Virginia and Maryland Coach Company, Inc., Arlington and Fairfax Motor Transportation Company, and Alexandria, Barcroft & Washington Transit Company according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before March 13, 1944, upon notice to this Commission and to the general public, by not less than 15 days' filing and posting in the manner prescribed in section 217 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of passengers between all Points in the District of Columbia, on the one hand, and the Virginia points named in the first paragraph hereof, including intermediate Virginia points, on the other, fares which shall not exceed the fares set forth in the findings in said report.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

1616 In the District Court of the United States for the District of Columbia

[File endorsement omitted.]

Civil Action No. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, 1006 NORTH GLEBE ROAD, ARLINGTON, VIRGINIA, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Complaint to enjoin, set aside, annul, or suspend order of Interstate Commerce Commission and for temporary stay

Filed March 11, 1944

I

Jurisdiction of this Court is invoked under the provisions of the Urgent Deficiencies Appropriation Act, approved October 22, 1913 (38 Stat. L. 219, 220, U. S. C., Title 28, Sections 41 (28) and 43–48 inclusive), and other applicable statutes of the United States.

II

Plaintiff above named brings this action pursuant to the statute above set forth permanently to enjoin, set aside, annul, or suspend the order of the Interstate Commerce Commission dated January 18, 1944, as extended by an order dated February 14, 1944, in Docket No. 28991; a proceeding in which plaintiff was a party.

1617 III

Plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, and, by virtue of Certificates of Public Convenience and Necessity granted by the Interstate Commerce Commission, is engaged in interstate transportation of passengers between Arlington County, Virginia; and a downtown terminal in the District of Columbia. Plaintiff is also engaged in the intrastate transportation of passengers in the Commonwealth of Virginia and in the District of Columbia by authority of the State Corporation Commission of the Commonwealth of Virginia and by authority of the Public Utilities Commission of the District of Columbia.

IV

Alexandria, Barcroft & Washington Transit Company, hereinafter sometimes referred to as the Alexandria Line; and Washington, Virginia and Maryland Coach Company, Inc., hereinafter sometimes referred to as the Coach Company, render intrastate motor carrier passenger service in the Commonwealth of Virginia subject to the regulatory jurisdiction of the State Corporation Commission of the Commonwealth of Virginia. Said motor bus carriers also render interstate motor carrier passenger service between designated terminals in the downtown business section of the District of Columbia, hereinafter referred to as the District, on the one hand, and points in Virginia, on the other. Said interstate service, together with the service performed by the plaintiff, includes, to the extent hereinafter described, service between the District and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, the same being Government
1618 installations, herein sometimes referred to collectively as the Virginia installations, located within a radius of 2.5 miles from the Virginia end of the 14th Street Highway Bridge across the Potomac River. Plaintiff performs interstate bus service between the District and said Pentagon Building and Navy Arlington Annex in connection with operation of its regular routes to and from points beyond. The Alexandria Line performs interstate bus service between the District and all four of the Virginia installations in connection with operation of its regular routes to and from points beyond, intrastate service within the District of Columbia, and intrastate service within the Commonwealth of Virginia. The Coach Company performs interstate bus service between the District and the Pentagon Building by means of off-route trips during the morning and afternoon rush hours. Said Alexandria, Barcroft & Washington Transit Company, Washington, Virginia and Maryland Coach Company, Inc., and the plaintiff are herein sometimes referred to collectively as the Virginia Lines.

V

Capital Transit Company furnishes urban streetcar and bus service for the transportation of passengers in the District and suburban service in nearby Maryland, and interstate bus service between fixed termini in the District and the Pentagon Building. Capital Transit Company operates two bus routes to the Pentagon Building. One of these is operated over the Memorial Bridge, with its District terminal located at 19th and C Streets NW., and is known as it Route R2; the other is operated over the Highway

Bridge, with its District terminal located at 7th Street and Constitution Avenue NW., and is known as its Route Q2.

1619

VI

A uniform one-way interstate fare of 10 cents is maintained by the Virginia Lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including all the Virginia installations, with the single exception of the Alexandria Line, which sells a book of 26 tickets for $1.95, or 7.5 cents each, good for transportation between its District terminal and the Army Air Force Annex. The fare on the Capital Transit Company's bus operating between the District and the Pentagon Building over the Memorial Bridge, known as its R2 line, is 5 cents each way, without restriction or limitation. The fare over the Capital Transit Company's other bus route to the Pentagon Building, known as its Q2 line, is the District fare (10 cents, three tokens for 25 cents, or a weekly pass which is sold for $1.25) plus 5 cents.

VII

All of plaintiff's operations, both interstate and intrastate, are conducted entirely within the Washington, D. C., Commercial Zone as determined by the Interstate Commerce Commission in Washington, D. C., Commercial Zone, 3 M. C. C. 243. Plaintiff has been engaged in the transportation of passengers in interstate commerce between Washington, D. C., and Arlington County, Virginia, since its incorporation in 1932, and still is so engaged. The rates of fare charged by the plaintiff for the carriage of passengers have been in effect since 1933. Plaintiff also engages in the intrastate transportation of passengers over the entire length of its interstate routes within the said Washington, D. C., Commercial Zone in accordance with the respective laws of the Commonwealth of Virginia and the District of Columbia.

1620

VIII

On or about April 27, 1943, the Secretary of War, with the concurrence of the Secretary of the Navy, filed a complaint with the Interstate Commerce Commission, hereinafter sometimes referred to as the Commission, alleging that the fares charged by the Virginia Lines and the Capital Transit Company for the carriage of passengers between the District and the Virginia installations were excessive. Thereafter, on or about July 3, 1943, the Commission issued an order instituting a proceeding docketed as No. 28991 and entitled, "Passenger Fares Between District of Colum-

bia and Nearby Virginia." A copy of said order is annxed hereto and made a part hereof, and marked "Exhibit A." The plaintiff, the other Virginia Lines, and the Capital Transit Company were, by said order, made respondents in said proceeding. The scope and purpose of said proceeding, as set forth in the first paragraph of said order, was as follows:

"It is ordered, That an investigation be, and it is hereby instituted into and concerning the reasonableness and lawfulness otherwise of the fares of respondents named in the next succeeding paragraph for the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand, with a view to making such findings in the premises and prescribing such just, reasonable, and otherwas lawful local and joint fares as are within the powers of the Commission under the Interstate Commerce Act and as the facts and circumstances shall appear to warrant."

IX

A hearing was thereafter held in said Docket No. 28991 before Commissioner Patterson and an Examiner; oral argument was thereafter had before the entire Commission and written briefs were submitted. The State Corporation Commission of the
1621 Commonwealth of Virginia entered an appearance and became a party to said proceeding. Immediately upon making such appearance and becoming a party in said proceeding the Virginia Commission orally moved (in which motion the plaintiff joined) that the proceeding be discontinued for the reason that the bus operations in question of each of the Virginia Lines were, by reason of Part II, Section 203 (b) (8), of the Interstate Commerce Act (49 U. S. C. Section 303 (b) (8)), and of the determination of said Commission in Washington, D. C., Commercial Zone, 3 M. C. C. 245, exempt (with certain exceptions set forth in Section 204 of the Interstate Commerce Act, 49 U. S. C. Section 304, not here material) from the provisions of Part II of the Interstate Commerce Act and consequently not subject to the jurisdiction of the Commission. Said Virginia Commission also made a motion in the alternative, and without waiving any rights respecting the jurisdictional question, to the effect that if the Commission denied the motion respecting the question of jurisdiction, then in that event the proceeding be referred to a properly constituted Joint Board for a hearing and recommendation pursuant to the provisions of Part II, Section 205 (a), of the Interstate

Commerce Act (49 U. S. C. Section 305 (a)). The presiding Commissioner referred said motions to the entire Commission and thereafter announced that the entire Commission had denied the motion to refer the proceeding to a Joint Board and had deferred ruling upon the motion respecting jurisdiction until the record was complete.

X

On January 18, 1944, a majority of the Commission issued its report and order in Docket No. 28991, a copy of which is annexed hereto and made a part hereof and marked "Exhibit B."

By said report and order the Commission purported to
1622 require that the plaintiff establish fares between points in Washington, D. C., on the one hand, and the Pentagon Building and Navy Arlington Annex and intermediary points on the other hand, at the rate of 10 cents per single trip, or three tokens for 25 cents (equal to 8⅓ cents per one way trip), and further required plaintiff to establish joint fare arrangements with Capital Transit Company at 13⅓ cents per one way trip.

XI

The report, conclusions, findings, and order of the Interstate Commerce Commission required the plaintiff to establish these new rates of fare on or before March 13, 1944, and to file tariffs not less than fifteen days prior thereto. Plaintiff and other respondents thereupon filed with the Interstate Commerce Commission petitions for reconsideration, reargument, and suspension of the report, conclusion, findings, and order and for modifications and revision thereof. On February 14, 1944, the Commission denied the petitions and extended the effective date of said order to April 13, 1944. Copies of plaintiff's petition for reconsideration and of the order of February 14, 1944, are attached hereto, marked "Exhibits C and D," respectively.

XII

The said order of the Commission is illegal and void because it purports to prescribe fares covering the bus operations of the plaintiff which are exempt (with certain exceptions set forth in Section 204 of the Interstate Commerce Act, 49 U. S. C. Section 304, not here material) from the provisions of Part II of the
Interstate Commerce Act and consequently not subject to the
1623 jurisdiction, as to fares, of the Commission. Said exemption exists by reason of the fact that the interstate bus opera-

tion of the plaintiff, with respect to which the Commission purports to prescribe fares, is conducted wholly within the zone adjacent to and commercially a part of the municipality of Washington, D. C., within the meaning of said Section 203 (b) (8) of the Interstate Commerce Act, as determined by the Commission in Washington, D. C., Commercial Zone, 3 M. C. C. 243, and by reason of the further fact that plaintiff engages in the intrastate transportation of passengers over the entire length of its interstate route within said Commercial Zone in accordance with the respective laws of the Commonwealth of Virginia and the District of Columbia. The conclusion of the Commission (report—Exhibit B hereto) that the application of the Interstate Commerce Act to the transportation in question is, in the language of Section 203 (b) (7a) (sic), necessary to carry out the national transportation policy, is in violation of the Fifth Amendment to the Constitution of the United States and of the said Interstate Commerce Act and is wholly without legal force or effect for the reasons that:

(a) the order instituting the proceedings did not afford notice that it was the intention of the Commission to consider and make a finding upon said matter;

(b) the conclusion of the Commission is not supported by findings of fact;

(c) the conclusion is not supported by evidence, but is contrary to the evidence;

(d) the conclusion is not based upon a specific finding that the traffic involved affects the "developing, coordinating, and preserving of a national transportation system;" and

(e) the conclusion could not be reached unless and 1624 until the Commission had first made a finding, after due notice and hearings, modifying its order in Washington, D. C., Commercial Zone, 3 M. C. C. 243.

XIII

The said order of the Commission is illegal and void because the proceeding in said Docket No. 28991 is a complaint matter as to rates, fares, and charges of motor carriers, arising in the administration of Part II of the Interstate Commerce Act, with respect to operations as to which a hearing is required, and by reason thereof the Commission was required (but failed and refused) to refer the matter to a properly constituted Joint Board for a hearing and recommended report and order, in accordance with the mandatory provisions of Section 205 (a) of said Interstate Commerce Act (49 U. S. C. Section 305).

XIV

The said order of the Commission is illegal and void because it is beyond the jurisdiction and authority of the Commission, in that, among other things:

(a) it attempts to prescribe and require joint fares between the local street railway operations of the Capital Transit Company on the one hand and those of the plaintiff on the other, whereas, under the provisions of Sections 15 (3), 216 (c) and 216 (e) of said Interstate Commerce Act, the establishment of joint fares between carriers of this kind and character is left to the voluntary action of the carriers, and none of these Sections or any other provision of said Act authorizes the Com-
1625 mission mandatorily to require and to prescribe such joint fares;

(b) it prescribes and requires such joint fares when no through routes have been established between plaintiff and the Capital Transit Company by agreement, arrangement, or otherwise;

(c) it requires and prescribes joint fares in interstate commerce between the plaintiff, an interstate common carrier by motor vehicle, and Capital Transit Company, an intrastate common carrier by motor vehicle, whose lines are not certificated, in accordance with the provisions of Part II of said Interstate Commerce Act, by the Interstate Commerce Commission;

(d) it prescribes and requires joint fares between plaintiff, on the one hand, and the Capital Transit Company, on the other, in the absence of a finding that the Capital Transit Company is "a common carrier by motor vehicle" within the meaning of Section 203 (a) (14) of the Interstate Commerce Act, and in the absence of a requirement that said Capital Transit Company have a certificate of public convenience and necessity or permit authorizing interstate transportation over all its routes affected by said order; and

(e) it requires the plaintiff to initiate and maintain commutation fares and to sell commutation tickets both on its own line and in conjunction with the lines of the Capital Transit Company; whereas Sections 22 and 217 (b) of said Interstate Commerce Act permit, but do not require, the issuance of commutation tickets, nor does any other provision of said Act authorize the Commission to require the sale of such commutation tickets.

1626 XV

The said order of the Commission is illegal and void because beyond the jurisdiction and authority of the Commission, in that, among other things:

(a) it asserts rate jurisdiction over the street railway operations of the Capital Transit Company, whereas said Commission under the provisions of the Interstate Commerce Act is without jurisdiction over operations of that kind and character;

(b) it requires the rendition of interstate service and prescribed the collection of interstate fares for operations by the Capital Transit Company, without finding that said Capital Transit Company, as to all its operations so affected, is a "common carrier by motor vehicle" within the meaning of Section 203 (a) (14) of the Interstate Commerce Act and without there being in effect, as to such operations, a certificate of public convenience and necessity or other permit covering the operations of the Capital Transit Company, so affected; and

(c) it has the effect of regulating the rate, fare, or charge for intrastate transportation or a service connected therewith of Capital Transit Company in violation of the express prohibitions of the proviso of Section 216 (e) of Part II of said Interstate Commerce Act.

XVI

The said order of the Commission is illegal and void in that, among other things, the interstate, individual and joint fares therein prescribed are unreasonably preferential, un-
1627 justly discriminatory, and unduly prejudicial in the following particulars:

(a) in prescribing differing rates of fare between the same points by competing carriers over approximately the same or similar routes;

(b) in prescribing rates of fare which will result in the charging of one fare for rush-hour periods and a different fare for identically the same carriage in non-rush hour periods;

(c) in authorizing one of the carriers, namely the Capital Transit Company, to operate a route in interstate commerce in competition with the plaintiff, without compensation for the service rendered by said Capital Transit Company, in violation of the provisions of Sections 1 (7) and 217 (b) of the Interstate Commerce Act; and

(d) in prescribing rates that are otherwise unreasonably preferential, unjustly discriminatory, and unduly prejudicial.

XVII

The said order of the Commission is illegal and void because the Commission erred in making the following findings, among others, without substantial evidence or any evidence to support such findings:

(a) that the War Department and Navy Department have a substantial or any interest in the proceeding;

(b) that the transportation involved is urban transportation;

(c) that it cannot anticipate radically increased
1628 costs or the falling off of traffic or other abrupt or decided changes;

(d) that the record warrants the conclusion that existing charges are higher than selected patrons should reasonably be called upon to bear; and

(e) that through routes are now in effect.

XVIII

The order of the Commission is illegal and void because the Commission has attempted to avoid the application of the exemption provision of Section 203 (b) 8 to the plaintiff by making the following findings:

(1) that the plaintiff has "only 'limited' intrastate rights in the District";

(2) that the plaintiff "performs only 'restricted' intrastate transportation in the District";

(3) that the plaintiff does not engage in intrastate transportation "between all points" along its line in the District;

which said findings are not within the language and meaning of Section 203 (b) 8 of the Act, which says:

"and provided that the motor carrier engaged in such transportation of passengers is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;"

and because said Commission has failed to find (and could not properly have so found) that plaintiff was not engaged in such intrastate transportation over the entire length of its interstate route, physically or jurisdictionally, in accordance with the laws of the Commonwealth of Virginia and of the District of Columbia.

1629

XIX

The Commission further erred in admitting in evidence, over the objection of the plaintiff, certain answers to certain questionnaires circulated by the complainants in Interstate Commerce Commission Case Docket No. 28991, and other evidence predicated thereon, and in basing its report, conclusions, finding, and order upon such evidence, thereby depriving plaintiff of an opportunity to confront and cross-examine as witnesses the persons whose answers to questionnaires were admitted in evidence.

XX

The report and order of the Commission in said Docket No. 28991, in the particulars mentioned herein, and in other particulars, is not supported by the evidence, is contrary to the evidence, results in unlawful preferences, discriminations, and prejudices, was made and entered arbitrarily, unreasonably, and capriciously and in excess of the statutory powers of the Commission, and denies plaintiff due process of law, contrary to the provisions of the Fifth Amendment of the Constitution of the United States.

XXI

Plaintiff avers that unless the said order of the Commission be set aside it will suffer great and irreparable injury in that it will be required to carry passengers for less than its lawfully established fares, and will be required to enter into through-route and joint-fare arrangements with the Capital Transit Company, and will lose large revenues which cannot be recovered by plaintiff from anyone; that the Interstate Commerce Commission is
1630 not by law responsible in damages for such loss or injuries to the plaintiff, and since such losses are not compensable, even a temporary cessation of plaintiff's lawfully existing fares would cause it great and irreparable loss and injury.

XXII

Plaintiff is advised and believes and therefore avers that the Capital Transit Company, one of the respondents involved in the Docket No. 28991 proceeding, has filed a separate complaint in this Court against the said defendants named herein, in which complaint substantially the same issues are involved and substantially the same relief is sought, and that said Capital Transit Company in said action has filed a certified copy of the testimony, exhibits, and complete record of the Docket No. 28991 proceedings before the Commission. Plaintiff is further advised and believes and therefore avers that the other carrier respondents in said Docket No. 28991 proceedings and the State Corporation Commission of the Commonwealth of Virginia have filed or shortly will file separate complaints against the same defendants named herein, in which complaints substantially the same issues are involved and the same relief is sought, or will intervene in this or the Capital Transit proceeding. When the issues have been joined upon this complaint plaintiff proposes to move that this action be consolidated for trial and disposition with the other actions mentioned above, and that said certified copies of the testimony, exhibits, and record filed in the action of the Capital Transit Company be

considered and dealt with as if filed in the instant action contemporaneously with the filing of this complaint.

Wherefore plaintiff being without adequate remedy at law, respectfully prays:

1631 1. That upon the filing of this bill of complaint the Judge of this Court to whom this case shall come shall call to his assistance in the hearing and determination thereof two other Judges, of whom at least one shall be a Circuit Judge;

2. That process may issue against the defendants, the United States of America and the Interstate Commerce Commission, and that after not less than five days' notice to the Interstate Commerce Commission and the Attorney General of the United States, as provided by law, a hearing be held, that an interlocutory decree be issued staying and suspending said order of the Interstate Commerce Commission;

3. That upon final hearing of this cause a permanent injunction issue decreeing that the order of the Interstate Commerce Commission is unlawful, null, and void, and that it be set aside and annulled, and that its enforcement, execution, and operation be forever enjoined, and that the United States of America and the Interstate Commerce Commission, their officers and agents, and others acting for them, be restrained from taking any steps or instituting or prosecuting any proceeding to enforce the aforesaid order, and that the plaintiff be given such other, further, and general relief as may be proper in the premises.

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY,
By F. K. LANE, *President.*

1632 [*Duly sworn to by Franklin K. Lane; jurat omitted in printing.*]

FRANKLIN K. LANE,
Franklin K. Lane,
822 Southern Building, Washington, D. C.,

WILMER A. HILL,
Wilmer A. Hill,
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HUGH H. OBEAR,
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Attorneys for Plaintiff.

Service accepted this 11th day of March 1944

EDWARD M. CURRAN,
U. S. Attorney.

1674 In the District Court of the United States for the District of Columbia

Civil Action No. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, 707 NORTH RANDOLPH STREET, ARLINGTON, VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

[File endorsement omitted.]

Complaint to set aside order of Interstate Commerce Commission and for temporary stay

Filed March 11, 1944

I

Jurisdiction of this Court is invoked under the provisions of U. S. C., Title 28, Sections 41 (28) and 43-48, inclusive, of said Act.

II

Plaintiff is a corporation duly organized and existing under the laws of the State of Virginia, and, under franchise granted by the State of Virginia, is regularly engaged in the for-hire intrastate transportation of passengers by motor vehicles within parts of Arlington and Fairfax Counties, Virginia. Plaintiff is also regularly engaged in interstate operations, over designated routes, between certain points in said Arlington and Fairfax Counties and certain designated points within the District of Columbia, and said regular interstate operations are extensions of its regular Virginia routes and service. Plaintiff conducts no intrastate operations in the District of Columbia and conducts no intrastate operations in Virginia which serve the Pentagon Buiding.

Plaintiff has regularly conducted intrastate operations in Virginia over fixed routes and said intrastate routes converge and terminate at Rosslyn, Virginia. From Rosslyn, regular intrastate operations are conducted to and from designated points in the District and said operations are over designated routes in the District. The said regular interstate operations are generally conducted across the Key Bridge, however, some

1675 portions of the interstate operations are conducted across the Arlington Memorial Bridge. Prior to the present war emergency, plaintiff conducted no operations across the Highway Bridge, and conducted no interstate operations to the Pentagon Building.

III

At various times in 1942 and 1943, plaintiff, together with other carriers, was requested by the United States War Department to cooperate in providing ways and means for transportation service between the District of Columbia and the Pentagon Building. By reason of such requests, plaintiff inaugurated a new and different interstate service between its terminal in the District and the Pentagon Building and said new operations are via the Highway Bridge.

The said new interstate service for the transportation of passengers between the Pentagon Building and plaintiff's terminal in the District involve new and longer routes and has no direct relation to or connection with any transportation otherwise conducted by this plaintiff, and none of its regular passengers, either interstate or intrastate, are intermingled with interstate passengers going to or from the Pentagon Building and none of its regular service and operations are conducted over any part of the said new route between the District and the Pentagon Building.

IV

Plaintiff's intrastate fares in Virginia are on the usual urban basis of a flat rate for transportation to, from or between all points within a zone. Plaintiff has a Virginia fare zone, adjacent to the District of Columbia, within which plaintiff's intrastate fares are 10¢ cash and such intrastate fares and zones are subject to regulation by the Corporation Commission of Virginia. Plaintiff's regular interstate transportation between Virginia and the District of Columbia is confined to the continuation of intrastate services and routes crossing the Key and Arlington Memorial Bridges, to a designated terminal in the vicinity of 11th and E Streets NW., in the City of Washington. Plaintiff makes no additional charge for interstate transportation in the District of Columbia, over and above the 10¢ intrastate fare for transportation in its Virginia zone adjacent to the District, and such interstate
1676 transportation is restricted to passengers who ride within the Virginia zone for a portion of the through trip.

At one time plaintiff charged 15¢ for the interstate ride over its regular routes and operations, but voluntarily discontinued the extra charge over and above its 10¢ intrastate zone fare.

In the sense that no extra charge is made, over and above the Virginia intrastate zone fare of 10¢, the interstate transportation is "free."

When plaintiff inaugurated, at the request of the War Department, the new interstate service to the Pentagon Building, it charged its usual 10¢ fare which included both the Virginia and District portions of the route, in accordance with the prevailing fares and practices with respect to its regular routes and services.

V

In order to provide interstate transportation between the Pentagon Building and the District, it was necessary for plaintiff to add new routes between the District and the Pentagon Building and to incur additional operating expense, and to divert equipment from the short and more direct routes normally operated via Key and Arlington Memorial Bridges. In rerouting equipment via the longer route over the Highway Bridge and diverting equipment from its regular operations, for special interstate service to and from the Pentagon Building, plaintiff obtained no increase in traffic over and above the normal business and revenues which its equipment produced in service over its regular intrastate and interstate routes. Plaintiff had no surplus equipment or employees for use on the special service to the Pentagon Building and all of its equipment was already being used to maximum capacity in its regular operations. Routing of equipment via the Pentagon Building increased the mileage operated and increased the time required to complete route trips between the District and its regular Virginia territory and thereby decreased the number of round trips which could be made in connection with its regular service between Virginia and the District. The inauguration of the new and different interstate service to the Pentagon Building resulted in a decrease in service over its regular routes and a decrease in revenues from operations over its regular routes.

The impairment of plaintiff's service over it regular routes
1677 was so great that plaintiff was obliged to curtail routing via the Pentagon Building during some of the morning rush hours, but it has continued the routing of between 10% and 15% of its equipment via the Pentagon Building during evening rush hours.

The service now being rendered via the Pentagon Building is supplemental to service being rendered by other carriers and is limited to such special off-route service as plaintiff can render without too serious impairment of its normal intrastate and interstate service.

The special interstate operations, so limited, do not give equal or equivalent morning rush hour and evening rush hour service.

VI

On July 3, 1943, the Interstate Commerce Commission in Docket No. 28991, issued an order for investigation of "Passenger Fares Between the District of Columbia and Nearby Virginia."

Plaintiff was made a respondent by said order.

The order of July 3, 1944 is attached hereto and identified as Exhibit "A."

Hearings were held by the Commission on August 19th, 20th, 25th, September 8th, 11th, 13th, and 14th, 1943, and at the hearing the Commission announced that the investigation was instituted on complaint of the Secretary of War, concurred in by the Secretary of the Navy and involved points representing certain governmental installations in Virginia.

On January 18, 1944, the Commission issued a report and order reciting the complaints and directing plaintiff to:

1. Establish multiple round-trip single-line fares for interstate transportation between the District of Columbia and the Pentagon Building at 3 tokens or tickets for 25¢, or 8⅓¢ per one-way trip. (The single trip 10¢ cash fare was left in effect.)

2. Establish joint interstate fares, with the Capital Transit Company, for multiple round trips at 12 for $1.60 or 13⅓¢ per one-way joint fare between the District of Columbia and the Pentagon Building, which joint fares were, by said order, applicable to both the bus and street car operations of the said Transit Company.

1678 The Commission's order of January 18, 1944, is attached hereto and identified as Exhibit "B."

On February 9, 1944 (due date February 24, 1944), plaintiff petitioned the Commission to reconsider said order, and to set aside the effective date thereof, and said petition for reconsideration is attached hereto and identified as Exhibit "C."

The petition for reconsideration challenged: (a) jurisdiction generally; (b) irregularity of the proceedings; (c) lack of proper record; (d) failure to make special jurisdictional findings; (e) failure to make factual findings, and (f) the arbitrary and capricious nature of the orders.

On February 14, 1944, the full Commission denied said petition for reconsideration, but extended the time for compliance with its orders to April 13, 1944. The order denying reconsideration is attached and identified as Exhibit "D."

VII

By the report and order of the Commission, dated January 18, 1944, the Commission misconceived its jurisdiction; exceeded its

powers; failed to follow statutory procedure; failed to conduct the proceedings in a mannar to accord plaintiff a fair and reasonable hearing; failed to develop evidence; failed to make findings upon which orders could be based; and issued arbitrary and capricious orders, in that:

(1) The Commission erred and exceeded its jurisdiction in undertaking to regulate local transportation as such and conducted wholly within a commercial zone, by reason of the fact that no section of the Interstate Commerce Act confers on the Commission primary jurisdiction over local transportation.

(2) The Commission erred and exceeded its jurisdiction in undertaking to regulate local transportation as such and conducted wholly within a commercial zone, by assuming that the National Transportation Policy conferred jurisdiction, whereas said policy does not in and of itself, confer any jurisdiction but merely establishes a policy with respect to the administration of other sections of the Interstate Commerce Act which do confer specific primary jurisdiction under proper circumstances, but which are not involved in this case.

1679 (3) The Commission erred and exceeded its jurisdiction and powers in undertaking to regulate local transportation as such and conducted wholly within a commercial zone and conditionally excepted under Sec. 203 (b) (8) of the Interstate Commerce Act, and without the Commission having first made jurisdictional finding of fact sufficient to remove the exemption and to establish secondary jurisdiction for the sole purpose of removing discriminations against, or burdens on, interstate commerce and in relation to matters committed to the primary jurisdiction of the Commission, by some provision of the Act, other than the National Transportation Policy.

(4) The Commission erred and exceeded its jurisdiction in initially hearing and considering a complaint respecting fares involving "not more than three states" without having first referred the matter to a Joint Board for hearing in accordance with the provisions of Sec. 205 (a) of the Interstate Commerce Act.

(5) The Commission erred in assuming primary jurisdiction under the National Transportation Policy, because as construed by the Commission, and without reference to any section of the Act or any authority elsewhere delegated, the broad and general terms of the National Transportation Policy have no bounds and, standing alone, fall within the shadow of unconstitutional delegation of power.

(6) The Commission erred and exceeded its jurisdiction in ordering plaintiff to establish joint fares with a street railway company because such joint fares are permissive only and may not

be required under Sec. 216 (c) or any other section of the Act and in requiring joint interstate fares with a street railway which holds no authority to engage in interstate operations and with respect to which no through routes exist.

(7) The Commission erred and exceeded its jurisdiction in undertaking to regulate voluntary services of a street railway and to prescribe joint fares, because transportation subject to the Commission's primary jurisdiction is that transportation which a carrier is bound to perform, and secondary jurisdiction cannot arise unless such voluntary activities result directly or indirectly in some violation of a statutory duty and obligation under the Interstate Commerce Act.

(8) The Commission erred and exceeded its jurisdiction in holding that it could acquire jurisdiction over an intrastate
1680 street railway and require joint fares, under any theory of intermingling of streetcar and bus operations involving both interstate and intrastate revenues and such construction is prohibited by Sec. 216 (e).

(9) The Commission erred and acted arbitrarily and capriciously in instituting an investigation on complaint and issuing orders pursuant thereto, without proper notice to respondents respecting the issues involved and thereby deprived respondents of a fair and reasonable hearing with respect to joint fares, division of joint fares and commercial zone exemptions.

(10) The Commission erred and acted arbitrarily and capriciously in instituting an investigation on complaint and in issuing orders pursuant thereto without requiring complainants to justify the complaint and produce evidence in support of the requested orders and in substituting conclusions for findings of fact and in failure to make findings of fact on both jurisdictional and substantive issues.

(11) The Commission erred and exceeded its jurisdiction in prescribing a series of fares for identical service and such variations in fares represent neither maximum, minimum or exact fares which limitations fix the limits of the Commission's jurisdiction to prescribe fares.

(12) The Commission erred and exceeded its jurisdiction in ordering plaintiff to establish commutation fares because no section of the Act confers such jurisdiction.

(13) The Commission acted arbitrarily and capriciously in ordering decreases in rates, commutation rates and joint rates, all of which necessarily result in requirements for additional facilities and service, without any record whatever showing the cost to the plaintiff of the present service or the cost of rendering any of the additional services which the order requires.

(14) The Commission acted arbitrarily and capriciously in ordering decreases in various charges for interstate transportation, without any record whatever from which it might determine the burden thereby cast on the intrastate fares and revenues of plaintiff.

(15) The Commission acted arbitrarily and capriciously in requiring special services to special destinations for a special class of passengers at special reduced rates, without determining whether the special service and special fares ordered were similar or dissimilar to other services rendered and fares charged by plaintiff.

1681 (16) The Commission acted arbitrarily and capriciously in ordering special reduced fares to special point destinations and in disregarding the patent result of creating innumerable preferences and discriminations respecting other points and passengers.

(17) The Commission acted arbitrarily and capriciously in ordering plaintiff to publish preferential and discriminatory fares without regard to the loss to which plaintiff will be subjected by reason of the necessity for making wholesale equalizing reductions to bring the remaining fare structure within statutory requirements.

(18) The Commission acted arbitrarily and capriciously in entering an order which is discriminatory as between companies in that the unlimited "weekly pass" issued by the Capital Transit Company for intrastate transportation has been prescribed for interstate transportation and it is not a rate or fare of any kind and no rate has been prescribed by the Commission, and the use of such intrastate "passes" for interstate transportation will have the effect of diverting substantially all of plaintiff's Pentagon Building business to the Capital Transit Company.

(19) The Commission acted arbitrarily and capriciously in ordering new and different kinds of tokens and tickets without investigation or findings and without regard for cost or the ability of plaintiff to supply same and to rebuild or replace its fare boxes to accommodate such special tokens or tickets.

(20) The Commission acted arbitrarily and capriciously in prescribing any fares whatever for this plaintiff without having, with respect to this plaintiff, a scintilla of cost data of record.

VIII

Plaintiff is one of several respondents before the Interstate Commerce Commission and all of the cases were heard on a joint record, and whereas other respondents have filed separate complaints with this Court, which complaints have been docketed as

Civil Nos. ——, ——, and ——; and in Civil No. ——, a complete record of the proceedings before the said Commission has been filed with the Court, and whereas all of the plaintiffs ask for similar relief, this plaintiff will move for consolidation of the cases for hearing, and that the complete record submitted in Civil No. ——, be taken and accepted by the Court as the record in this case.

1682

IX

By reason of the errors as aforesaid the report and order of the Commission, dated February 9, 1944, is null and void, and will deprive plaintiff of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that:

(a) The reduced single-line fares prescribed will not produce sufficient revenue to cover the operating cost to plaintiff of performing the special and extra interstate services covered and required by the order and will not provide any return on plaintiff's investment in equipment and facilities employed by plaintiff in rendering said special and extra interstate transportation service between the District and the Pentagon Building.

(b) The prescribed joint fares will not produce sufficient revenue to cover the operating cost to plaintiff of performing the special and extra interstate service covered and prescribed by the order and will not provide any return on plaintiff's investment in equipment and facilities employed by plaintiff in rendering said special and extra interstate transportation service between the District and the Pentagon Building.

(c) The deficiency in out-of-pocket operating expenses which said order will result in, will exceed $1,500 per month, and the value of equipment and facilities employed in such service and for which no return will be realized will be in excess of $100,000.

(d) Unless this Court sets aside said order of the Commission, dated January 18, 1944, in Docket 28991, plaintiff will suffer irreparable injury and for which plaintiff will have no legal remedy.

Wherefore, plaintiff prays:

1. That the Court, consisting of three judges, constituted as required by the Act of October 22, 1913, U. S. C., Title 28, Section 47, be convened; and that process issue against the defendants, the United States of America and the Interstate Commerce Commission;

2. That, upon five days' due and legal notice to the defendants, a hearing be held, and that an interlocutory decree be issued staying and suspending said order of the Interstate Commerce Commission, and each and every part thereof;

3. That, upon final hearing, a permanent injunction issue decreeing that the order of the Interstate Commerce Commission is unlawful, null and void, and that it be set aside and
1683 annulled, and that its enforcement, execution, and operation be forever enjoined; and that the United States of America and the Interstate Commerce Commission, their officers and agents, and others acting for them, be restrained from taking any steps or instituting or prosecuting any proceeding to enforce the aforesaid order;

4. That plaintiff have such other, further, and general relief as may be equitable and proper.

WASHINGTON, VIRGINIA & MARYLAND COACH CO., INC.,
JOSEPH L. ARNOLD, V. P.

Attest:
[SEAL] H. H. ENGLAND,
Secretary.

[*Duly sworn to by Joseph L. Arnold; jurat omitted in printing.*]

J. NINIAN BEALL,
316 Investment Bldg., Washington, D. C.,
Attorney for plaintiff.

Copy served this 11th day of March 1944.

EDWARD M. CURRAN,
United States Attorney for the District of Columbia.

1708 In the District Court of the United States for the District of Columbia

Civil Action No. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA (P. O. ADDRESS—RICHMOND, VIRGINIA), PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

[File endorsement omitted.]

Complaint

Filed March 11, 1944

Plaintiff above named brings this action, pursuant to the provisions of the Urgent Deficiencies Appropriation Act, approved October 22, 1913 (38 Stat. L. 219, 220, U. S. C., Title 28, Sections 41 (28) and 43–48 inclusive), and other applicable statutes of the United States, permanently to enjoin, set aside, annul and

suspend the order of the Interstate Commission dated January 18, 1944, as extended by an order dated February 14, 1944 in Docket No. 28991, a proceeding in which plaintiff appeared. Plaintiff alleges as follows:

I

Plaintiff is an agency of state government of the State of Virginia, existing under the provisions of the laws of the State of Virginia and having jurisdiction over motor carriers and street railways operating within the State of Virginia.

II

Arlington and Fairfax Motor Transportation Company, hereinafter referred to as the Arlington Line; Alexandria, Barcroft & Washington Transit Company, hereinafter referred to as the Alexandria Line; and Washington, Virginia and Maryland Coach Company, Inc., hereinafter referred to as the Coach Company, render intrastate motor carrier passenger service in the
1709 State of Virginia subject to the regulatory jurisdiction of plaintiff. Said carriers, herein sometimes referred to collectively as the Virginia Lines, also render interstate motor carrier passenger service between designated terminals in the downtown business section of the District of Columbia, hereinafter referred to as the District, on the one hand, and points in Virginia, on the other. Said interstate service includes, to the extent hereinafter described, service between the District and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, the same being government installations, herein sometimes referred to collectively as the Virginia installations, located in Virginia within a radius of 2.5 miles from the Virgina end of the 14th Street Highway Bridge across the Potomac River. The Arlington Line performs interstate bus service between the District and said Pentagon Building and Navy Arlington Annex in connection with operation of its regular routes to and from points beyond. The Alexandria Line performs interstate bus service between the District and all four of the Virginia installations in connection with operation of its regular routes to and from points beyond. The Coach Company performs interstate bus service between the District and the Pentagon Building by means of out-of-route trips during the morning and afternoon rush hours.

III

Capital Transit Company, hereinafter referred to as the Transit Company, furnishes regular urban and suburban streetcar and bus

service for the transportation of passengers in the District and nearby Maryland, and interstate bus service between the District and the Pentagon Building. The Transit Company operates two bus lines to the Pentagon Building. One of these lines is routed over the Memorial Bridge, with its District terminal located at 19th and C Streets NW., and the other is operated over the Highway Bridge with its District terminal located at 7th Street and Constitution Avenue NW.

IV

A uniform one-way interstate fare of 10 cents is maintained by the Virginia Lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including the Virginia installations, with the single exception that the Alexandria Line sells a book of 26 tickets for $1.95, or 7.5 cents each, which are good for transportation between its District terminal and the Army Annex. The fare on the Transit Company's bus routes operating between the District and the Pentagon Building is 5 cents each way, said company continuing to charge the regular fare for intrastate transportation on its street railway and bus lines in the District.

V

1710 On or about April 27, 1943, the Secretary of War, with the concurrence of the Secretary of the Navy, wrote to the Interstate Commerce Commission, hereinafter referred to as the Commission, complaining that the fares charged by the Virginia Lines and the Transit Company for bus service between the District and the Virginia installations were excessive. Thereafter on or about July 3, 1943, the Commission issued an order instituting a proceeding docketed as No. 28991 and entitled, "Passenger Fares Between District of Columbia and Nearby Virginia." A copy of said order is annexed hereto and made a part hereof, and marked Exhibit A. The Virginia Lines and the Transit Company were, by said order, made respondents in said proceeding. The scope and purpose of said proceeding, as set forth in the first paragraph of said order, was as follows:

"It is ordered, That an investigation be, and it is hereby instituted into and concerning the reasonableness and lawfulness otherwise of the fares of respondents named in the next succeeding paragraph for the interstate transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand, with a view to making such findings in

the premises and prescribing such just, reasonable, and otherwise lawful local and joint fares as are within the powers of the Commission under the Interstate Commerce Act and as the facts and circumstances shall appear to warrant."

VI

A hearing was thereafter held in said Docket No. 28991 before one Commissioner and an Examiner; oral argument was thereafter had before the full Commission and written briefs were submitted. Upon the commencement of the hearing the plaintiff entered an appearance in said proceeding. Immediately upon making such appearance plaintiff orally moved that the proceeding be discontinued for the reason that the bus operations in question of the Virginia Lines were, by reason of Part II, Section 203 (b) (8) of the Interstate Commerce Act (49 U. S. C. Sec. 303 (b) (8)), and the determination of said Commission in Washington, D. C. Commercial Zone, 3 M. C. C. 243, exempt (with certain exceptions not here in point) from the provisions of Part II of the Interstate Commerce Act and consequently not subject to the jurisdiction of the Commission. Plaintiff also made a motion in the alternative and without waiving any rights respecting the jurisdictional question, which motion was to the effect that, if the Commission denied the motion respecting the question of jurisdiction, then in that event the proceeding be referred to a properly constituted
1711 Joint Board for a hearing and recommendation pursuant to the provisions of Part II, Section 205 (a) of the Interstate Commerce Act (49 U. S. C. Sec. 305 (a)). The presiding Commissioner referred said motions to the full Commission and thereafter announced that the full Commission had denied the motion to refer the proceeding to a Joint Board and had deferred ruling upon the motion respecting jurisdiction until the record was completed.

VII

On January 18, 1944, the Commission (three Commissioners dissenting) issued its report and order in Docket No. 28991, a copy of which is annexed hereto and made a part hereof and marked Exhibit B. By said report and order the Commission purported to require that the Transit Company and the Virginia Lines establish, maintain and apply to the transportation of passengers between points in the District, on the one hand, and the Virginia installations and intermediate points, on the other hand, other and different fares than those presently in effect, as described above. By said report and order the Commission also purported to require that the Virginia Lines establish joint fare arrangements with the

Transit Company. The effect of said report and order, if the same becomes effective, will be to reduce substantially and throw into maladjustment the fares of all said carriers for service between the District and the Virginia installations, as hereinafter more particularly described.

VIII

On February 12, 1944 plaintiff duly filed with the Commission a petition for reconsideration and reargument of said report and order and for modification and revision thereof. A copy of said petition is annexed hereto and made a part hereof and marked Exhibit C. On February 14, 1944, an order was entered by the Commission, without opinion, denying plaintiff's petition for reconsideration and reargument and also denying the like petitions filed by the respondent carriers in said proceeding. A copy of said order is annexed hereto and made a part hereof and marked Exhibit D.

IX

The said order of the Commission is illegal and void because it purports to prescribe fares covering that portion of the bus operations of the Arlington and Alexandria Lines which are exempt (with certain exceptions not here in point) from the provisions of Part II of the Interstate Commerce Act and consequently not subject to the jurisdiction, as to fares, of the Commission. Said exemption exists by reason of the fact that the interstate bus operations with respect to which the Commission purports to prescribe fares, are conducted wholly within the zone adjacent to and commercially a part of the municipality of
1712 Washington, D. C. within the meaning of said Section 203 (b) (8) of the Interstate Commerce Act, as determined by the Commission in Washington, D. C. Commercial Zone, 3 M. C. C. 243, and by reason of the further fact that, contrary to the implied finding of the Commission (Sheet 7 of order—Exhibit B hereto) said Lines engage in the intrastate transportation of passengers over the entire length of their respective interstate routes within said Commercial Zone in accordance with the respective laws of Virginia and the District. Said implied finding of the Commission to the contrary, based upon the fact that said Lines do not engage in intrastate transportation between each and every intermediate point along their respective routes within the District, is without foundation in law, is based upon a misconstruction and misapplication of said Section 203 (b) (8) and is wholly without legal force or effect. The conclusion of the Commission (Sheet 7 of order—Exhibit B hereto) that the application of the Interstate

Commerce Act to the transportation in question is, in the language following Section 203 (b) (7a), necessary to carry out the national transportation policy is in violation of Fifth Amendment to the Constitution of the United States and of the said Interstate Commerce Act and is wholly without legal force or effect for the reasons that, (a) the order instituting the proceeding did not afford notice that it was the intention of the Commission to consider and make a finding upon said matter: (b) the conclusion of the Commission is not supported by findings of fact; and (c) the conclusion is not supported by the evidence, but is contrary to the evidence.

X

The said order of the Commission is illegal and void because the proceeding in said Docket No. 28991 is a complaint matter as to rates, fares and charges of motor carriers, arising in the administration of Part II of the Interstate Commerce Act, with respect to operations as to which a hearing is required, and by reason thereof the Commission was required (but failed and refused) to refer the matter to a properly constituted Joint Board for a hearing and recommended report and order, in accordance with the provisions of Section 205 (a) of said Interstate Commerce Act (49 U. S. C. Sec. 305).

XI

The said order of the Commission is illegal and void because beyond the jurisdiction and statutory authority of the Commission, in that, among other things, (a) it purports to assert rate jurisdiction over the urban street railway operations of the Transit Company, whereas said Commission, under the provisions of said Interstate Commerce Act, is without jurisdiction over operations of that kind and character; (b) it purports to require and prescribe joint fares between the urban street railway operations of the Transit Company, on the one hand, and the Virginia Lines on the other, whereas, under the provisions of Section 15 (3) and 216 (c) (e) of said Interstate Commerce Act, the establishment of joint fares between carriers of this kind and character is left to the voluntary action of the carriers and neither these sections nor any other provision of said Act authorizes the Commission mandatorily to require and prescribe such joint fares; (c) it requires the rendition of interstate service and prescribes the collection of interstate fares for operations by the Transit Company without finding that said company, as to all of its operations so affected, is a "common carrier by motor vehicle" within the meaning of Section 203 (14) of the Interstate Commerce Act, and without there being in effect, as to such operations,

1713

a certificate of public convenience and necessity, as required by Section 206 (a); (d) it purports, in the absence of a finding that the Transit Company is a "common carrier by motor vehicle" within the meaning of Section 203 (14) of the Interstate Commerce Act, and in the absence of a requirement that said company have a certificate of public convenience and necessity authorizing interstate transportation over all its routes affected by said order, to prescribe and regulate rates, fares and charges for intrastate transportation, and service connected therewith, contrary to the provisions of Sections 202 (b) and 216 (e) of the Interstate Commerce Act; (e) it prescribes and requires joint fares when no through routes have been established by agreement, arrangement or otherwise; and said order is otherwise illegal as beyond the jurisdiction of the Commission.

XII

The said order of the Commission is illegal and void because the interstate individual and joint fares therein prescribed are unreasonably preferential, unjustly discriminatory and unduly prejudicial to particular persons, localities and descriptions of traffic in the following particulars among others, (a) by prescribing an 8⅓ cent token fare for service on the Virginia Lines between the District and Virginia installations, whereas residents of Virginia located no farther from the District than said installations, are required to pay a minimum fare of 10 cents for transportation by the same carriers in the same vehicles for the same or less distances; (b) by prescribing an 8⅓ cent token fare for transportation by the Transit Company or a joint commutation fare of 13⅓ cents for service on the Virginia Lines-Transit Company routes between the District and the Virginia installations, whereas residents of Virginia located no farther from the District than said installations, are required to pay a minimum fare of 18⅓ cents (10 cent cash fare on Virginia Lines plus 8⅓ cent token fare on Transit Company buses or street cars) for transportation by the same carriers in the same vehicles for the same or less distances; (c) by prescribing an 8⅓ cent token fare for transportation by the Transit Company from any point in the District served by said company to the Virginia installations, whereas persons within the District using the Transit Company-Virginia Lines routes from the District to the Virginia installations are required to pay a minimum commutation fare of 13⅓ cents; (d) by prescribing and requiring a lower fare for service between the District and the Virginia installations, when rendered exclusively by the Transit Company, than the fare prescribed and required on the Transit Company-Virginia Lines routes, resulting in the diversion of passenger revenue now enjoyed by the Virginia Lines

1714°

to the Transit Company, to the prejudice of residents of Virginia who are dependent upon the regular interstate and intrastate service of the Virginia Lines; and said prescribed rates are otherwise unreasonably preferential, unjustly discriminatory and unduly prejudicial.

XIII

The report and order of the Commission in said Docket No. 28991, in the particulars mentioned herein, and in other particulars, is not supported by the evidence, is contrary to the evidence, results in unlawful preferences, discriminations and prejudices, was made and entered arbitrarily, unreasonably and capriciously and in excess of the statutory powers of the Commission, and denies due process of law, contrary to the provisions of the Fifth Amendment of the Constitution of the United States. Plaintiff will suffer great and irreparable injury, unless said order be set aside, in that it will be unable, as the public utility regulatory agency of the State of Virginia, to perform its statutory duties and functions fairly, properly and fully, which duties and functions, in so far as they are pertinent to this proceeding, are so to administer the Public Utility laws of Virginia as to assure adequate, safe and dependable intrastate transportation by said Virginia Lines at reasonable rates and without undue preference, discrimination or prejudice.

XIV

Upon information and belief plaintiff states that the respondents involved in said Docket No. 28991 proceeding have filed, or shortly will file, separate complaints in this Court against the same defendants named herein, in which complaints substantially the same issues are involved and the same relief is sought. One or more of said other complainants are filing, contemporaneously with the filing of their said complaints, a certified copy of the testimony, exhibits and complete record of the Docket No. 28991 proceedings before the Commission. When the issues are joined upon the instant complaint it is the intention of plaintiff to move that this suit be consolidated, for trial and disposition with the other suits mentioned above and that said certified copy
1715 of said testimony, exhibits and record, filed with one or more of said other suits be considered and dealt with as if filed in the instant suit contemporaneously with the filing of this complaint.

Wherefore plaintiff prays:

1. That a summons issue under the seal of this Honorable Court and a copy of said summons and of this complaint be served upon the United States and the Interstate Commerce Commission, as

prescribed by the Federal Rules of Civil Procedure and by the statutes in such case made and provided.

2. That this Court, as soon as practicable, convene a specially constituted Court of three judges, as required by the Act of October 22, 1913 (28 U. S. C. Sec. 47), and that a temporary or interlocutory injunction be entered herein restraining, enjoining and suspending until a further order of this Court the operation, execution and enforcement of said order, or any part thereof, and restraining and enjoining the defendants and their officers, agents and employees from enforcing or attempting to enforce said order, or any part thereof, pending final determination of this action.

3. That after final hearing, the Court adjudge, order and decree that said order of the Interstate Commerce Commission be perpetually voided, set aside, suspended and annulled, and the enforcement thereof perpetually restrained and enjoined.

4. That plaintiff may have such other and further relief in the premises as equity and justice may require and as may be deemed by this Court to be adequate and proper under the circumstances.

H. E. KETNER,
FREDERICK G. HAMLEY,
Frederick G. Hamley,
Attorneys for Plaintiff,
Address: 7413 New Post Office Building (ICC Section), Washington, D. C.

[*Duly sworn to by Frederick G. Hamley; jurat omitted in printing.*]

Copy of foregoing complaint received this 11th day of March 1944.

EDWARD M. CURRAN,
U. S. Attorney.

1745 In United States District Court

Civil Action No. 23420

[Title omitted.]
[File endorsement omitted.]

Petition for leave to intervene of Alexandria, Barcroft and Washington Transit Company

Filed March 20, 1944

To the Honorable Judges of the District Court of the United States for the District of Columbia:

Your petitioner, the Alexandria, Barcroft and Washington Transit Company, pursuant to leave of the Court heretofore

granted, files herein its intervening petition and bill of intervention and thereby shows unto this Honorable Court:

I

That your petitioner is a corporation duly organized and existing under and by virtue of the laws of Virginia and is a citizen of Virginia, and that it is duly licensed and authorized to do business in the State of Virginia; that it has its principal office and place of business in the City of Alexandria, Virginia; that petitioner is engaged in the transportation of passengers as a common carrier by motor vehicle between points within Virginia and between points in Virginia and its terminal in the District of Columbia; that among the points served by petitioner in Virginia
are the Pentagon Building, the Navy Arlington Annex, the
1746 Army Air Force Annex at Gravelly Point, and the Washington National Airport; that petitioner transports passengers between these federal buildings and other points in Virginia and its terminal in the District of Columbia; and that petitioner has complete intrastate rights over the routes and between the points traversed by it within Virginia and has limited intra-District rights within the District of Columbia.

II

Petitioner maintains interstate fares of 10 cents for a one-way trip between points served by it in Virginia, within an area of approximately eight miles, and its terminal at 12th and Pennsylvania Avenue in the District of Columbia. The 10-cent fare applies between the terminal of the petitioner in the District of Columbia and other points in Virginia, including the Pentagon Building, the Navy Arlington Annex, the Army Air Force at Gravelly Point, and the Washington National Airport. Petitioner has no arrangement with plaintiff, the Capital Transit Company, for the through or continuous transportation of passengers between points on its line in Virginia and points served by the street railway and bus lines of plaintiff in the District of Columbia. Passengers who travel between points in the District served by the plaintiff and points in Virginia served by petitioner must pay the respective local fares of each company. The lowest combination of fares available to such a passenger for such a trip is 18⅓ cents.

III

That on July 3, 1943, at the request of the Secretary of War and the Secretary of Navy, the Interstate Commerce Commission

entered an order instituting an investigation concerning the reasonableness of the fares and charges exacted by petitioner, the Washington, Virginia and Maryland Coach Company, Inc., the Arlington and Fairfax Motor Transportation Company, hereinafter referred to as the Virginia respondents, and plaintiff the Capital Transit Company. Hearings were held, the issues were briefed and the proceeding was orally argued before the entire Commission. On January 18, 1944, the Commission made its report and order. By its report and order, the Commission found that the local fares of petitioner between the four federal buildings in Virginia hereinbefore described, and its terminals in the District of Columbia are unreasonable to the extent they exceed a fare of three tokens for 25 cents, equal to 8⅓ cents per one-way trip, with the right of petitioner to continue its existing cash fare of 10 cents per single trip. The Commission also found that the combination or aggregate of the bus and streetcar fares for multiple trips of the Capital Transit Company and the petitioner between the federal buildings in Virginia and all points in the District of Columbia are unreasonable to the extent that they exceed a fare of $1.60, valid for 12 one-way trips, equal to 13⅓ cents per one-way trip, which fare, including transfer privileges on the lines of the Capital Transit Company, it found to be reasonable for the multiple service indicated.

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IV

The order entered by the Commission required petitioner to establish the reduced local fares and the reduced joint fare with the Capital Transit Company, on or before March 13, 1944, on not less than 15 days notice to the public, by filing appropriate tariffs with the Interstate Commerce Commission. Petitioner and the other respondents before the Commission filed petitions for reconsideration, reargument, and suspension of the findings, conclusions, and order, and on February 15, 1944, the Commission denied the petitions, but extended the effective date of its order to April 13, 1944.

1748

V

The order is arbitrary, unreasonable, and contrary to law in that, it requires petitioner to establish a commutation fare not to exceed three tokens for 25 cents, equal to 8⅓ cents per one-way trip for application to passengers transported by petitioner between the four federal buildings in Virginia already described, and the terminal of petitioner in the District of Columbia, and a joint commutation fare not to exceed $1.60, good for 12 one-way trips, equal to 13⅓ cents per trip for use by passengers trans-

ported by petitioner between the said federal buildings in Virginia and all points served by the street electric railway and the bus lines of the plaintiff in the District of Columbia. Petitioner alleges that the Commission is without statutory authority to require it to establish commutation or token fares as such, and is without statutory authority to require petitioner to establish joint fares of any character for use on the street electric railway lines of the plaintiff. Petitioner further alleges that in prescribing the joint fare referred to the Commission erroneously found and assumed, without evidence to support such a finding or assumption, that there existed as between a petitioner and plaintiff a through route, or a common arrangement for continuous carriage of passengers between the federal installations in Virginia and points in the District of Columbia.

VI

The order of the Commission is unreasonable, arbitrary, and discriminatory in that it requires plaintiff to establish a token fare not to exceed 8⅓ cents for application to passengers between the Pentagon Building in Virginia and points served by plaintiff in the District of Columbia, whereas the order requires petitioner and the plaintiff to establish a joint fare of 13⅓ cents for application of passengers transported by petitioner between the Pentagon Building and points in the District of Columbia served by the plaintiff.

1749

VII

Petitioner further alleges that the order of the Commission is arbitrary, capricious, and confiscatory in that it requires petitioner to establish a joint fare with plaintiff, Capital Transit Company, not to exceed 13⅓ cents per one-way trip, without any consideration or finding by the Commission as to the division of that rate which should or will inure to petitioner, and without any evidence bearing upon that subject. In fact, the Commission received no evidence on that subject and gave no consideration to the question whether the joint fare prescribed is sufficiently compensatory to permit a division thereof that will leave to petitioner and to plaintiff a fair return on the value of their respective properties which may or will be used in the performance of the respective services contemplated by the joint fare.

VIII

The order of the Commission is unreasonable, arbitrary, and contrary to the evidence in that, inter alia, the Commission found that the evidence bears out the belief that transportation charges

are an important underlying cause of a large turn-over of employees in the four federal buildings in Virginia; that the record warrants the conclusion that the existing fares and charges are higher than the persons using the interstate services of petitioner and the plaintiff can be reasonably called upon to bear; and that it is the practice to maintain a uniform zone fare in other areas where the physical layout bears a general resemblance to the area involved in the proceeding before the Commission.

1750 IX

Your petitioner represents to this Court and alleges that it has a pecuniary interest in the matters in litigation in the above-mentioned cause, and seeks and demands the same relief which is sought by the plaintiff herein; that your petitioner further represents that it has a pecuniary interest in the fares and charges which are affected by the order of the Interstate Commerce Commission hereinbefore described; and that unless said order is restrained, enjoined, or set aside by this Court, the resulting rates and charges of petitioner and the joint fares and charges of petitioner and plaintiff will be unjust and unreasonable and unfairly discriminatory.

X

Petitioner further alleges that the order entered by the Interstate Commerce Commission on January 18, 1944, hereinbefore described, by its terms makes the report attached thereto a part thereof; that said order is arbitrary, is based on errors of law, is in excess of the statutory authority of the Commission, and for these reasons the order is null and void because, inter alia, it is not supported by basic findings, is not supported by evidence, and is contrary to the evidence.

Wherefore, your petitioner prays:

1. That the Court cause to be entered herein an order permitting your petitioner to file its petition of intervention in the above-entitled cause.

2. That the United States of America and the Interstate Commerce Commission, defendants herein, be required to make full, true and perfect answer to this petition, but not under oath, answer under oath being expressly waived.

1751 3. That your petitioner be granted a temporary stay or suspension, or a temporary injunction restricting the Interstate Commerce Commission and the United States of America from continuing to enforce, pending final hearing herein, the said order of the Interstate Commerce Commission.

4. That this court adjudge, order and decree that the order of the Interstate Commerce Commission hereinbefore described is beyond the lawful authority of that Commission, is without warrant in law and is null and void; and that said order be enjoined, set aside, and annulled.

5. That this Court order a full and proper service of this petition to be made forthwith by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice of the United States of America.

6. That your petitioner may have such other and general relief in the premises as may be equitable and proper.

Respectfully submitted.

ALEXANDRIA, BARCROFT & WASHINGTON TRANSIT COMPANY,
ROBERT E. QUIRK,
By Robert E. Quirk, *Its Attorney.*

Address of Counsel: Robert E. Quirk, Norman, Quirk & Graham, 1116 Investment Building, Washington, D. C.

1752 [*Duly sworn to by Robert T. Mitchell; jurat omitted in printing.*]

1767 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Petition of the Secretary of War for leave to intervene

Filed March 20, 1944

Now comes Henry L. Stimson, Secretary of War, by his counsel, The Judge Advocate General, and respectfully submits this petition for leave to intervene in the cases referred to above. The petition is based upon the following grounds:

1. These cases were instituted by the filing of complaints pursuant to the provisions of the Urgent Deficiencies Appropriation Act, approved 22 October 1913 (28 U. S. C. 41 (28), 43–48), to enjoin the enforcement of an order issued by the Interstate Commerce Commission on 18 January 1944 in a proceeding entitled "Passenger Fares Between District of Columbia and Nearby Virginia" (I. C. C. Docket No. 28991). Your petitioner was

1768 a party to the proceedings before the Interstate Commerce Commission and, therefore, has a right to intervene in the present cases (28 U. S. C. 45a).

2. The proceedings before the Interstate Commerce Commission were commenced in July 1943. Hearings were held during August and September of that year. Oral argument was heard by the Commission on 9 November 1943. The Commission rendered its decision on 18 January 1944. Under that decision certain reductions in fares by the plaintiffs in the present cases were ordered. Under the original order of the Commission, the lower fares were required to be put into effect on or before 13 March 1944. However, at the request of the present plaintiffs, the Commission on 14 February 1944, extended the effective date of the order to 13 April 1944.

3. The order of the Interstate Commerce Commission is supported by substantial evidence in the record of the proceedings before the Commission and no error was committed by the Commission in the consideration and disposition of the matter.

4. In the opinion of your petitioner, the effective prosecution of the war effort at the seat of Government demands that the new fare schedule, as ordered by the Interstate Commerce Commission, be made effective as soon as possible, and, in any event, not later than the 13th of April 1944.

Wherefore, your petitioner respectfully prays that he may have leave to file this petition and that he be permitted to intervene in these proceedings as a party and, in connection therewith, to file an answer or other pleadings, or join in any other answer or pleadings that may be filed, and to participate in any argument that may be heard by the court. If the petition is granted, petitioner further prays that the court deny the applications for
1769 an interlocutory injunction, that the court decline to grant any restraining order which would have the effect of postponing beyond 13 April 1944, the putting into effect of the fares found to be reasonable by the Interstate Commerce Commission, and the complaints be dismissed upon final hearing.

Respectfully submitted.

MYRON C. CRAMER,
Major General, U. S. Army,
The Judge Advocate General;
Counsel for the Secretary of War.
By MASTIN G. WHITE.
Mastin G. White,
Colonel, J. A. G. D.,
Chief, Litigation Division.

PAUL S. DAVIS,
Paul S. Davis,
Captain, J. A. G. D.,
Of Counsel.
Dated 16 March 1944.

1770 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Petition of the Secretary of the Navy for leave to intervene

Filed March 20, 1944

Now comes the Secretary of the Navy, and respectfully submits this petition for leave to intervene in the cases referred to above. The petition is based upon the following grounds:

1. These cases were instituted by the filing of complaints pursuant to the provisions of the Urgent Deficiencies Appropriation Act, approved 22 October 1913 (28 U. S. C. 41 (28), 43–48),
1771 to enjoin the enforcement of an order issued by the Interstate Commerce Commission on 18 January 1944 in a proceeding entitled "Passenger Fares Between District of Columbia and Nearby Virginia" (I. C. C. Docket No. 28991). Your petitioner was a party to the proceedings before the Interstate Commerce Commission and, therefore, has a right to intervene in the present cases (28 U. S. C. 45a).

2. The proceedings before the Interstate Commerce Commission were commenced in July 1943. Hearings were held during August and September of that year. Oral argument was heard by the Commission on 9 November 1943. The Commission rendered its decision on 18 January 1944. Under that decision, certain reductions in fares by the plaintiffs in the present cases were ordered. Under the original order of the Commission, the lower fares were required to be put into effect on or before 13 March 1944. However, at the request of the present plaintiffs, the Commission on 14 February 1944, extended the effective date of the order to 13 April 1944.

3. The order of the Interstate Commerce Commission is supported by substantial evidence in the record of the proceedings before the Commission, and no error was committed by the Commission in the consideration and disposition of the matter.

4. In the opinion of your petitioner, the effective prosecution of the war effort at the seat of Government demands that the new fare schedule, as ordered by the Interstate Commerce Commission, be made effective as soon as possible, and, in any event, not later than the 13th of April 1944.

Wherefore, your petitioner respectively prays that he may have leave to file this petition and that he be permitted to inter-

1772 vene in these proceedings as a party, and in connection therewith to file an answer or join in any other answer filed herein and to participate in any argument herein. If the petition is granted, petitioner further prays that the court deny the applications for an interlocutory injunction, that the court decline to grant any restraining order which would have the effect of postponing beyond 13 April 1944, the putting into effect of the fares found to be reasonable by the Interstate Commerce Commission, and that the complaints be dismissed upon final hearing.

Respectfully submitted.

FRANK KNOX,
Secretary of the Navy.

Dated March 17, 1944.

1777 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Order allowing petition of intervention of Alexandria, Barcroft & Washington Transit Company

March 20, 1944

On application duly made in Court for leave of the Alexandria, Barcroft & Washington Transit Company to intervene in the above-entitled proceeding, it is ordered that leave be, and the same is hereby, granted to the Alexandria, Barcroft & Washington Transit Company to file its petition of intervention and pleadings against the validity of the order of the Interstate Commerce Commission, and to be made party to the cause:

By the Court:

J. M.
J. B.
F. D. L.

1780 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil No. 23420

Answer of the United States

Filed March 22, 1944

Now comes the United States of America, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraph I.

2. Admits the allegations of paragraphs II through V, but refers the Court to the Commission's report for a more complete statement concerning the matters mentioned in these paragraphs. For further answer to paragraph II alleges that plaintiff's cars and busses operating exclusively within the District are also engaged in interstate commerce within the meaning of the Interstate Commerce Act insofar as they carry passengers having an origin or ultimate destination in any of the Virginia military installations referred to in the Commission's report.

3. In answer to paragraph VI admits that plaintiff introduced evidence before the Commission that its bus operations to the Pentagon from the two terminals used by its busses in such operations were conducted at a loss under the five-cent fare, but refers the Court to the Commission's report for a more
1781 complete statement concerning this evidence than is contained in this paragraph. For further answer alleges that plaintiff's evidence was contradicted by evidence submitted by the War and Navy Departments. For further answer alleges that the Commission properly concluded that plaintiff's Pentagon operations were not independent of its other operations, that the Pentagon traffic originates or terminates on all other streetcar and bus lines of plaintiff in the District of Columbia, and that plaintiff's figures did not establish that the new rates covering the through transportation to and from all points on its lines in the District would be confiscatory.

4. Denies the allegations of paragraph VII of the complaint.

5. Denies that the Commission's order is illegal for any of the reasons set forth in paragraphs VIII and IX of the complaint or for any other reason.

6. Denies the allegations of paragraphs X and XI of the complaint.

7. Denies that the Commission's order is illegal, null, and void for any of the reasons set forth in paragraphs XII through XV of the complaint or for any other reason.

8. Denies the allegations of paragraph XVI of the complaint, except admits that plaintiff's intrastate fares are regulated exclusively by the Public Utilities Commission of the District of Columbia and that the Interstate Commerce Commission is not responsible in damages.

Wherefore, it is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

1782 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Civil No. 23421

Answer of the United States

Filed March 22, 1944

Now comes the United States, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraphs I and II of the complaint.

2. Admits the allegations of paragraphs III through VI of the complaint to the extent that the allegations contained therein are consistent with the Commission's findings and statement in its report, to which the Court is referred for a more complete statement concerning the matters mentioned in these paragraphs.

3. Admits the allegations of paragraph VII of the complaint except it denies that plaintiff is engaged in intrastate commerce over the entire length of its interstate routes in the District of Columbia. The last allegation is contrary to the express finding of the Commission in its report.

1783 4. Admits the allegations of paragraph VIII of the complaint except denies that the present proceedings were

instituted on the complaint of the Secretary of War and the Secretary of the Navy within the meaning of Section 205 (a) of the Interstate Commerce Act.

5. Admits the allegations of paragraphs IX through XI of the complaint.

6. Denies that the Commission's order is illegal and void for any of the reasons alleged in paragraph XII of the complaint or for any other reason.

7. Denies the allegations of paragraph XIII of the complaint.

8. Denies that the Commission's order is illegal and void for any of the reasons referred to in paragraphs XIV through XVIII of the complaint or for any other reason.

9. Denies the allegations of paragraphs XIX and XX of the complaint.

10. Admits that the Interstate Commerce Commission is not by law responsible in damages as alleged in paragraph XXI of the complaint but denies that the Commission's order subjects plaintiff to any unlawful injury.

11. Admits the allegations of paragraph XXII of the complaint and alleges that it has no objection to the consolidation of these cases.

Wherefore, it is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

1784 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil No. 23422

Answer of the United States

Filed March 22, 1944

Now comes the United States, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraph I.

2. Admits the allegations of paragraphs II through VI of the complaint to the extent that they are consistent with the state-

ment and findings of the Commission in its report in the present case, to which the Court is referred for a more complete statement concerning the matters mentioned in these paragraphs. For further answer specifically denies that the proceedings before the Commission were instituted on a complaint of the War Department and the Navy Department within the meaning of Section 205 (a) of the Interstate Commerce Act.

3. Denies that the Commission's action was unlawful or in excess of its statutory and constitutional powers for any of the reasons referred to in paragraph VII of the complaint or for any other reason.

1785 4. Admits the allegations of paragraph VIII of the complaint and alleges that it has no objection to the consolidation of these cases.

5. Denies the allegations of paragraph IX of the complaint.

Wherefore, it is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

1787 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Civil No. 23423

Answer of the United States

Filed March 22, 1944

Now comes the United States, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraph I of the complaint.

2. Admits the allegations of paragraphs II through IV of the complaint to the extent that they are consistent with the statement and findings of the Commission in its report in the present case, to which the Court is referred for a more complete statement concerning the matters mentioned in these paragraphs. For further answer to paragraph III alleges that the Capital Transit

Company is also engaged in interstate commerce on its lines within the District of Columbia to the extent that it carries passengers originating in or destined to the Virginia military installations.

3. Admits the allegations of paragraph V except that it denies that the case was instituted on complaint of the War and Navy Departments within the meaning of Section 205 (a) of the Interstate Commerce Act.

1788 4. Admits the allegations of paragraph VI of the complaint.

5. Admits the allegations of paragraph VII of the complaint except denies that the fares will be thrown into maladjustment by the Commission's order.

6. Admits the allegations of paragraph VIII of the complaint.

7. Denies that the Commission's order is illegal and void for any of the reasons alleged in paragraphs IX through XII of the complaint or for any other reason.

8. Denies the allegations of paragraph XIII of the complaint.

9. Admits the allegations of paragraph XIV of the complaint and alleges that it has no objection to the consolidation of these cases.

Wherefore, it is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

1790 In United States District Court

[Title omitted.]

[File endorsement omitted:]

Civil No. 23420

Answer to petition of intervenor

Alexandria, Barcroft and Washington Transit Company

Filed March 22, 1944

Now comes the United States, defendant herein, and in answer to the intervening petition of the Alexandria, Barcroft and Washington Transit Company says:

1. Admits the allegations of paragraph I through IV of the petition to the extent that they are consistent with the findings and statements of the Interstate Commerce Commission in its report in this case, to which the Court is referred for a more complete statement concerning the matters mentioned in these paragraphs.

2. Denies that the Commission's order is arbitrary, illegal, confiscatory or void for any of the reasons alleged in paragraphs V through X of the petition or for any other reason.

Wherefore, it is respectfully prayed that the petition be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

1791 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action No. 23420

Answer of Interstate Commerce Commission

Filed March 24, 1944

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission for the purposes of this action admits the allegations thereof.

II

Answering paragraph III of the bill of complaint, the Commission admits the allegations thereof except that it denies that

the fare established by plaintiff over its Q–2 line is five cents cash.

1792 III

Answering paragraphs IV to XVI, inclusive, of the bill of complaint, the Commission admits that at the request of the Secretary of War, concurred in by the Secretary of the Navy, it instituted, by order of July 3, 1943, an investigation into the reasonableness and the lawfulness otherwise of the fares of the plaintiff and of the other carriers, named in said paragraph IV, for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand; admits and alleges that the proceeding thus instituted was entitled Docket No. 28991, Passenger Fares between District of Columbia and Nearby Virginia, and that following full hearings it made and entered in the said proceeding the report and order of January 18, 1944, referred to in said paragraph IV, whereby it prescribed, and required the establishment of fares for the said transportation as therein shown and specified; admits and alleges that a true and correct copy of the said report and order is attached to the bill of complaint, marked "exhibit A"; admits and alleges that, following the entry of the said order, the petitions for reconsideration, reargument and suspension, referred to in paragraph V of the bill, were filed with it and that on February 14, 1944, it denied the same except that it extended the effective date of the order to April 13, 1944; and admits and alleges that true copies of the plaintiff's petition and of its order of denial of February 14, 1944, are attached to the bill of complaint, marked "exhibits B and C," respectively.

1793 The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the parties to said proceedings, its

said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of January 18, 1944, are based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and conditions called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

1794 The Commission further alleges that said report and order of January 18, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph VI of the bill of complaint, the Commission admits that the plaintiff submitted in the proceeding certain evidence in respect of its operating expenses which was duly considered and weighed but it respectfully refers the Court to the certified record of the proceeding introduced by the plaintiff herein for correct and full information as to the evidence before it.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of January 18, 1944.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
DANIEL W. KNOWLTON,
By Daniel W. Knowlton,
Chief Counsel.

1795 [*Duly sworn to by J. Haden Alldredge; jurat omitted in printing.*]

1796 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action No. 23421

Answer of Interstate Commerce Commission

Filed March 24, 1944

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission for the purposes of this action admits the allegations thereof.

II

Answering paragraph III of the bill of complaint, the Commission admits the allegations thereof except that with respect to the allegation that the plaintiff is engaged in the intrastate transportation of passengers in the District of Columbia by authority of the Public Utilities Commission of the
1797 District of Columbia, the Commission admits that the plaintiff performs certain intrastate transportation between a limited number of points in the District but alleges that it is not authorized to render general urban service between all District points along its lines, and, except as so admitted and alleged, the Commission denies the said allegation of the paragraph.

III

Answering paragraph IV of the bill of complaint, the Commission admits the allegations thereof except that, with respect to the allegation that the "Alexandria Line performs * * * intrastate service within the District of Columbia * * *," the Commission admits that the said Line performs certain intrastate transportation between a limited number of points in the

District but alleges that it is not authorized to render general urban service between all District points along its lines, and, except as so admitted and alleged, the Commission denies the said allegation of the paragraph.

IV

Answering the paragraphs V to VII, inclusive, of the bill of complaint, the Commission admits the allegations thereof except the allegation in the last sentence of paragraph VII which it denies.

V

Answering paragraphs VIII to XXII, inclusive, of the bill of complaint, the Commission admits that at the request of the Secretary of War, concurred in by the Secretary of the Navy, it instituted, by order of July 3, 1943, an investigation into the reasonableness and the lawfulness otherwise of the fares of the plaintiff and of the other carriers, referred to in said paragraph VIII, for the transportation of passengers between all
1798 points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand; admits and alleges that the proceeding thus instituted was entitled Docket No. 28991, Passenger Fares Between District of Columbia and Nearby Virginia, and that following full hearings it made and entered in the said proceedings the report and order of January 18, 1944, referred to in paragraph X of the bill, whereby it prescribed, and required the establishment of, fares for the said transportation as therein shown and specified; admits and alleges that a true and correct copy of the said report and order is attached to the bill of complaint, marked "exhibit B"; admits and alleges that, following the entry of the said order, the petitions for reconsideration, reargument and suspension, referred to in paragraph XI of the bill, were filed with it and that on February 14, 1944, it denied the same except that it extended the effective date of the order to April 13, 1944; and admits and alleges that true copies of the plaintiff's petition and of its order of denial of February 14, 1944, are attached to the bill of complaint, marked "exhibits C and D," respectively.

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence

hearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission
1799 for determination on behalf of said parties by the respective counsel; including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of January 18, 1944, are based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said report and order of January 18, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph IX of the bill of complaint, the Commission admits that certain motions by the Public Service Commission of Virginia were made in the proceeding and that action thereon was taken, but it re-
1800 spectfully refers the Court to the certified record of the proceeding introduced herein for correct and full information in the premises.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, insofar as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of January 18, 1944.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel.

1801 [*Duly sworn to by J. Haden Alldredge; jurat omitted in printing.*]

1802 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action No. 23422

Answer of Interstate Commerce Commission

Filed March 24, 1944

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled action, now ~~and~~ at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I to IV, inclusive, of the bill of complaint, the Commission for the purposes of this action admits the allegations thereof.

II

Answering paragraphs V to IX, inclusive, of the bill of complaint, the Commission admits and alleges that at the request of the Secretary of War, concurred in by the Secretary
1803 of the Navy, it instituted, by order of July 3, 1943, (Exhibit "A" of bill), an investigation into the reasonableness and the lawfulness otherwise of the fares of the plaintiff and of certain other carriers for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air

Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand; admits and alleges that the proceeding thus instituted was entitled Docket No. 28991, Passenger Fares Between District of Columbia and Nearby Virginia, and that following full hearings it made and entered in the said proceeding the report and order of January 18, 1944, referred to in paragraph VI of the bill, whereby it prescribed, and required the establishment of, fares for the said transportation as therein shown and specified; admits and alleges that a true and correct copy of the said report and order is attached to the bill of complaint, marked "exhibit B"; admits and alleges that, following the entry of the said order, the petition of plaintiff for reconsideration, referred to in paragraph VI of the bill, was filed with it and that on February 14, 1944, it denied the same except that it extended the effective date of the order to April 13, 1944; and admits and alleges that true copies of the plaintiff's petition and of its order of denial of February 14, 1944, are attached to the bill of complaint, marked "exhibits C and B," respectively.

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and 1804 other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of January 18, 1944, are based.

The Commission further alleges that the findings and conclusions in said report were *are* are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their

respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said report and order of January 18, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the
1805 Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering the allegations in paragraph VI of the bill of complaint that it announced at the hearings "that the investigation was instituted on complaint" and that it issued a report and order "reciting the complaints," the Commission denies the allegations.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of January 18, 1944.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DAVID W. KNOWLTON, *Chief Counsel.*

1806 [*Duly sworn to by J. Haden Alldredge; jurat omitted in printing.*]

1807 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action No. 23423

Answer of Interstate Commerce Commission

Filed March 24, 1944

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I to III, inclusive, of the bill of complaint, the Commission for the purposes of this action admits the allegations thereof.

II

Answering paragraph IV of the bill of complaint, the Commission admits the allegations thereof except that it denies that the fare established by the Capital Transit Company over its Q–2 line is five cents.

1808

III

Answering paragraphs V to XIV, inclusive, of the bill of complaint, the Commission admits that on request of the Secretary of War, concurred in by the Secretary of the Navy, it instituted, by order of July 3, 1943 (copy shown as Exhibit A to complaint), an investigation into the reasonableness and the lawfulness otherwise of the fares of the plaintiff and of the other carriers, named in said paragraph V, for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand; admits and alleges that the proceeding thus instituted was entitled Docket No. 28991, Passenger Fares between District of Columbia and Nearby Virginia, and that following full hearings it made and entered in the said proceeding the report and order of January 18, 1944, referred to in paragraph VII of the bill, whereby it prescribed, and required the establishment of, fares for the said transportation as therein shown and specified; admits and alleges that a true and correct copy of the said report and order is attached to the bill of complaint, marked "exhibit B"; admits and alleges that following the entry of the said order, the petition for reconsideration, reargument, and suspension, referred to in paragraph VIII of the bill, was filed with it and that on February 14, 1944, it denied the same except that it extended the effective date of the order to April 13, 1944; and admits and alleges that true copies of the plaintiff's petition and of its order of denial of February 14, 1944, are
1809 attached to the bill of complaint, marked "exhibit C and D," respectively.

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act;

that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of January 18, 1944, are based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding
1810 by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said report and order of January 18, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Further and more particularly answering paragraph VI of the bill of complaint, the Commission admits that the plaintiff made certain motions in the proceeding but it respectfully refers the Court to the certified record of the proceeding introduced herein for correct and full information in the premises.

Further and more particularly answering paragraph X of the bill of complaint, the Commission denies that the proceeding was a "complaint matter" within the meaning of section 205 (a) of the Interstate Commerce Act.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations

herein, or with the statements or conclusions of fact included in said report and order of January 18, 1944.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
DANIEL W. KNOWLTON,
By Daniel W. Knowlton,
Chief Counsel.

1811 [*Duly sworn to by J. Haden Alldredge; jurat omitted in printing.*]

1812 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action No. 23420

Answer of Interstate Commerce Commission to petition and bill of intervention of Alexandria, Barcroft and Washington Transit Company

Filed March 24, 1944

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition and bill of intervention contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph I of the petition and bill of intervention, the Commission for the purposes of this action admits the allegation thereof.

II

Answering paragraph II of the petition and bill of intervention, the Commission admits the allegations thereof
1813 except the allegation that "petitioner has no arrangement with plaintiff, the Capital Transit Company, for the through or continuous transportation of passengers between points on its line in Virginia and points served by the street railway and bus lines of plaintiff in the District of Columbia," which allegation the Commission denies.

III

Answering paragraphs III to X, inclusive, of the petition and bill of intervention, the Commission admits that at the request of the Secretary of War, concurred in by the Secretary of the Navy, it instituted, by order of July 3, 1943, an investigation into the reasonableness and the lawfulness otherwise of the fares of the plaintiff and of the other carriers, named in said paragraph III, for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Air Port, on the other hand; admits and alleges that the proceeding thus instituted was entitled Docket No. 28991, Passenger Fares Between District of Columbia and Nearby Virginia, and that following full hearings it made and entered in the said proceeding the report and order of January 18, 1944, referred to in said paragraph III, whereby it prescribed, and required the establishment of, fares for the said transportation as therein shown and specified; and admits and alleges that, following the entry of the said order, the petitions for reconsideration, reargument and suspension, referred to in paragraph IV of the said petition and bill, were filed with it and that on February 1814 14, 1944, it denied the same except that it extended the effective date of the order to April 13, 1944.

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by the petitioner in this suit, whereupon the Commission determined said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of January 18, 1944, are based.

The Commissioner further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of petition and bill of intervention herein.

1815 The Commission further alleges that said report and order of January 18, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said petition and bill of intervention.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition and bill of intervention, in so far as they conflict either with the allegations herein, or with the statements of conclusions of fact included in said report and order of January 18, 1944.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition and bill of intervention be dismissed.

INTERSTATE COMMERCE COMMISSION,
By DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel.

1816 [*Duly sworn to by J. Haden Alldredge; jurat omitted in printing.*]

1817 In the District Court of the United States
for the District of Columbia

Civil Action 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before MILLER, Associate Justice, United States Court of Appeals, District of Columbia, and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court.

Opinion

Filed May 1, 1944

BAILEY, J:

Each of the above-named plaintiffs has brought an action to set aside an order of the Interstate Commerce Commission of January 18, 1944, as extended by an order of February 14, 1944. These actions have been consolidated for trial.

The orders of the Commission were made pursuant to an investigation instituted at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arling-

ton Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand.

The Pentagon is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the 14th Street Highway Bridge. The Navy Annex is about two miles south of the Virginia end of the Memorial Bridge, and about one mile west of the Pentagon Building. It is reached from the Memorial Bridge over Arlington Ridge Road, which does not run by the Pentagon. The Army Annex is on the Mt. Vernon Memorial Highway, about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

The Transit Company furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other hand. All four serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington Line. The Army Annex and the Airport are served only by the Alexandria line. All of the plaintiffs operate lines over both the Memorial Bridge and the Highway Bridge. The routes
1819 over which plaintiffs operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

After hearings the Commission undertook to fix fares between all points of the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Transit Company, and the Pentagon, the Navy Annex, the Army Annex, and the Airport, on the other hand, including joint fares between the Capital Transit Company and the Virginia Companies. Each of the plaintiffs claims that the Commission was without jurisdiction to make the order complained of.

The Interstate Commerce Commission Act, Section 203 (b), (7a), and (8) (49 U. S. C. 303, (b), (7a), (8)) excepts from the jurisdiction of the Commission certain municipal zones. This section provides:

"(7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment

apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *"

All the operations in question are performed within the territorial limits of the District of Columbia municipal zone prescribed by the Interstate Commerce Commission, Washington District of Columbia Commercial Zone, 3 M. C. C. 243. The first question that arises is the meaning of the phrase "lawfully engaged in the intrastate transportation of passengers over the entire
1820 length of such interstate route or routes in accordance with the laws of each state having jurisdiction." The Commission contends that the Capital Transit Company is not engaged in intrastate transportation in Virginia and that the Virginia companies are engaged in only limited intrastate transportation in the District of Columbia. But the transportation from the Virginia line to the Pentagon is intrastate, and is subject to regulation by the State Corporation Commission of Virginia, and the Virginia companies not only do local business in Virginia but, while their intrastate business in the District of Columbia may be said to be limited, their transportation in the District of Columbia is regulated by the Utilities Commission of the District of Columbia. The fact that the Capital Transit Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate. As stated by the Commission;

"This is urban mass transportation between points in the District and points in Virginia just beyond the District line, and is the same in all characteristics as transportation between residential areas of the District and commercial and Government establishments in the District."

The transportation involved here is not interurban but, as the Commission says, urban transportation and, as such, it was not, in our opinion, the intention of Congress to confer jurisdiction on the Commission to regulate fares for transportation of this nature.

Section 216 (e) of the Motor Carrier Act contains this proviso:

"Provided, however, That nothing in this part (the Motor Carrier Act is Part II of the Interstate Commerce Act) shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

The effect of the Commission's ruling is to regulate fares for intrastate transportation for it provides for a fare over a large intrastate system of transportation under the guise of regulating fares for what is substantially urban transportation be-
1821 tween the District of Columbia and points in nearby Virginia.

The Commission says:

"All that the Commission's order does here is to extend the District of Columbia rate base and the District of Columbia fares of the Capital Transit Company both cash and token to cover this Virginia transportation."

Indeed, the order of the Commission makes clear that its basic theory is that these Virginia installations should be treated, for transportation purposes, as part of the District.

As we are of the opinion, as above stated, that the Commission had misconstrued the statutes in holding that the various plaintiffs are not "also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction," it is not necessary to decide whether the Commission has jurisdiction over fares over the electric street railway lines of the Capital Transit Company, which constitute about half the entire mileage operated by the streetcars and busses of the Capital Transit Company in the District of Columbia.

The Commission, however, after taking the view that it had jurisdiction by virtue of its construction of the Act of Congress set out, added:

"In any event, we are of the opinion and find application of the Act to that transportation is, in the language of section 203 (b) (7a) necessary to carry out the national transportation policy."

The National Transportation Policy, as defined in the section of the Act quoted, is as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in trans-

portation and among the several carriers; to encourage the establishment and maintenance for reasonable charges for transportation services, without unjust discriminations, undue
1822 preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. * * *"

The Commission does not say, however, in what respect its order complies with the National Transportation Policy, nor does it make any findings to support its general conclusion that its order "is necessary" to carry out the National Transportation Policy.

In City of Yonkers v. United States, 320 U. S. 685, 689–692:

"The Commission itself has noted that in the 'construction of these exclusion clauses great difficulty has been experienced, particularly in determining the roads properly classifiable as interurban electric railways.' Annual Report (1928), p. 80. That difficulty is apparent here by the division of opinion which exists in the Court whether this Yonkers branch is an 'interurban electric' railway which is 'operated as a part' of the New York Central system. § 1 (22). As stated by Mr. Justice Brandeis in United States v. Idaho, 298 U. S. 105, 109, the determination of what is included within the exemption of § 1 (22) involves a 'mixed question of fact and law.' Congress has not left that question exclusively to administrative determination; it has given the courts the final say. *Id.*, p. 109. It is settled that the aid of the Commission need not be sought before the jurisdiction of a court is invoked to enjoin violations of the provisions in question. Texas & Pacific Ry. Co. v. Gulf, C. & S. F. Ry. Co., 270 U. S. 266. And the fact that the Commission fails to make a finding on this jurisdictional question obviously does not preclude the reviewing court from making that determination initially. But we deem it essential in cases involving a review of orders of the Commission for the courts to decline to make that determination without the basic jurisdictional findings first having been made by the Commission.

"* * * In the application of the doctrine of the Shreveport case, this Court has required the Commission to show meticulous respect for the interests of the States. It has insisted on a 'suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear.' Florida v. United States, 282 U. S. 194, 211–212. In that

case this Court set aside an intrastate rate order of the Commission because of the 'lack of the basic or essential findings required to support the Commission's order.' *Id.*, p. 215. The principle of the Florida case is applicable here. The question is not 1823 merely one of elaborating the grounds of decision and bringing into focus what is vague and obscure.' See United States v. Chicago, M., St. P. & P. R. Co., 294 U. S. 499. Cf. Securities & Exchange Commission v. Chenery Corp., 318 U. S. 80. Here as in the Florida case the problem is whether the courts should supply the requisite jurisdictional findings which the Commission did not make and to which it even failed to make any reference.

"* * * The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the federal and state domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears. The sacrifice of these legitimate local interests may be as readily achieved through the Commission's oversight or neglect (Illinois Commerce Commission v. Thompson, 318 U. S. 675) as by improper findings. The insistence that the Commission make these jurisdictional findings before it undertakes to act not only gives added assurance that the local interests for which Congress expressed its solicitude will be safeguarded. It also gives to the reviewing court the assistance of an expert judgment on a knotty phase of a technical subject.

"We are asked to presume that the Commission, knowing the limit of its authority, considered this jurisdictional question and decided to act because of its conviction that this branch line was not exempt by reason of § 1 (22). But that is to deal too cavalierly with the Congressional mandate and with the local interests which are pressing for recognition. Where a federal agency is authorized to invoke an overriding federal power except in certain prescribed situations and then to leave the problem to traditional state control, the existence of federal authority to act should appear affirmatively and not rest on inference alone.

"This is not to insist on formalities and to burden the administrative process with ritualistic requirements. It entails a matter of great substance. It requires the Commission to heed the mandates of the Act and to make the expert determinations which are conditions precedent to its authority to act.

"We intimate no opinion on the merits of the controversy. For in absence of the requisite jurisdictional findings we think the order of the Commission should have been set aside."

Inasmuch, then, as we are of the opinion that the Commission had no jurisdiction, unless it be necessary to carry
1824 out the national transportation policy, and, as the Commission has made no findings to support that conclusion, the order of the Commission should be set aside.

It is unnecessary to pass upon other questions raised in the pleadings.

An order will be entered directing the defendant Interstate Commerce Commission to set aside the order of July 3, 1943, and perpetually enjoining its enforcement.

JUSTIN MILLER,
JENNINGS BAILEY,
F. DICKINSON LEITS.

1825 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Findings of fact and conclusions of law

Filed May 15, 1944

Upon consideration of the pleadings, evidence and argument and briefs of counsel the Court makes the following:

1826 *Findings of fact*

1. The Capital Transit Company is engaged in the transportation of passengers for hire by bus and streetcar within the District of Columbia and nearby Virginia, and by bus between the District and the War Department Pentagon Building in the State of Virginia; the Virginia companies, that is, the Arlington & Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Company, Inc., and the intervenor, Alexandria, Barcroft & Washington Transit Company are engaged in the transportation of passengers for hire by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District on the one hand, and points in Virginia, on the other hand; all four of the Virginia companies serve the Pentagon Building; the Navy Annex is served by the Alexandria line and the Arlington line; the Army Annex and the Washington National Airport are served only by the Alexandria line; all of the plaintiff companies and the intervenor operate lines over both the Me-

morial Bridge and the Highway Bridge; the routes over which the plaintiff companies and the intervenor operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

2. This proceeding, ICC Docket No. 28991, was begun at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, for an investigation into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Annex, the Army Annex and the Airport, on the other hand.

3. The Pentagon Building is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the
1827 Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the Fourteenth Street Highway Bridge; the Navy Annex is about two miles south of the Virginia end of the Memorial Bridge and about one mile west of the Pentagon Building; the Navy Annex is reached from the Memorial Bridge over Arlington Ridge Road which does not run by the Pentagon; the Army Annex is on the Mt. Vernon Highway about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

4. By order dated January 18, 1944, the Commission undertook to fix fares between all points in the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Transit Company, and the Pentagon, the Navy Annex, the Army Annex and the Airport, on the other hand, including joint fares between the Capital Transit Company and the Virginia companies.

5. The Order dated January 18, 1944, undertook to extend and expand the District of Columbia fare boundary to include the Pentagon Building so as to permit a passenger to ride to the Pentagon on the lines of the Capital Transit Company from any point in the District of Columbia for the existing District fares established by the Public Utilities Commission of the District of Columbia.

6. All of the operations involved are performed within the territorial limits of the District of Columbia commercial zone prescribed by the Interstate Commerce Commission, Washington District of Columbia Commercial Zone, 3 MCC 243.

7. All of the transportation here involved is urban mass transportation within the Washington District of Columbia Commercial Zone.

1828 8. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length

of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

9. The Court has not passed upon any of the questions of law raised by the parties other than those set forth in these Findings of Fact and Conclusions of Law.

Conclusions of law

1. This Court has jurisdiction in this proceeding under the provisions of the Act of October 22, 1913; 28 USCA Sec. 47.

2. The Interstate Commerce Commission has no jurisdiction for the purpose of fixing fares or establishing joint fares for the operations here involved since said operations are conducted wholly within the Washington District of Columbia Commercial Zone designated by the Commission in 3 MCC 243.

3. The Commission has made no findings to support the conclusion that the exercise of its jurisdiction over plaintiffs and the intervenor is necessary in the interest of the National Transportation policy.

4. The Commission has no jurisdiction to issue the order of January 18, 1944.

5. It is unnecessary to pass upon any of the other questions of law raised by the parties.

Dated May 15, 1944.

JUSTIN MILLER,
JENNINGS BAILEY,
F. DICKINSON LETTS.

1829 In the District Court of the United States for the District of Columbia

[File endorsement omitted.]

Civil Action No. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

vs.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Order granting permanent injunction

Filed May 15, 1944

These actions came on for hearing upon motions for preliminary injunction and for final hearing for permanent injunction, upon the complaints and answers filed herein, and upon the evidence and record of the proceedings before the Interstate Commerce Commission, and the oral argument and briefs of counsel 1830 and, having given consideration thereto and made findings of fact and conclusions of law thereon, it is by the Court this 15th day of May 1944

Ordered, that the order of the Interstate Commerce Commission dated January 18, 1944, in Docket No. 28991, be and it is hereby set aside and permanently enjoined.

JUSTIN MILLER,
JENNINGS BAILEY,
F. DICKINSON LETTS.

1833 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Motion to amend language of order entered May 15, 1944, or to issue order supplemental thereto, and for interlocutory order pendente lite

Filed June 29, 1944

To the Honorable JUSTIN MILLER, the Honorable JENNINGS BAILEY, the Honorable F. DICKINSON LETTS, Justices constituting a statutory three-judge Court.

Come now the plaintiffs and the Alexandria, Barcroft and Washington Transit Company, intervenor in the above-
1834 entitled cases, and herein called the Intervenor, and move the Court to amend its order of injunction entered herein on May 15, 1944, or to issue an order supplemental thereto, so as to make said order of injunction more specific and clear and to enter an interlocutory order suspending pendente lite the order of the Interstate Commerce Commission, dated June 12, 1944, in Docket 28991 enjoining the defendants from enforcing said order.

And as reasons for their motion plaintiffs and intervenor say:

1. Notwithstanding the opinion and decision of this Court in this cause filed herein on the 1st day of May 1944, holding that the Interstate Commerce Commission was without jurisdiction to enter its order of January 18, 1944, the Interstate Commerce Commission on May 8, 1944, prior to the entry of the decree herein and the entry of the findings of fact and conclusions of law by this court, and without authority from this Court so to do, served an order upon plaintiffs and intervenor (copy of which is annexed hereto marked "Exhibit A" and prayed to be taken as a part hereof) which, upon its own motion, reopened proceedings No. 28991, being the subject matter of this civil action, "for further hearing and reconsideration with respect to matters passed upon by the Court" and hearing thereon was set for the 22nd day of May 1944.

2. Thereafter on the 15th day of May, 1944, this Court entered its findings of fact and conclusions of law and its final decree permanently enjoining the Interstate Commerce Commission from carrying into effect its order of January 18, 1944, which said order, by specific reference, embodied the said Commission's report and findings of January 18, 1944.

3. The Interstate Commerce Commission on the 18th day of May 1944, served upon plaintiffs and intervenor a so-called corrected order in said proceedings No. 28991 (copy of said
1835 notice is annexed hereto and marked "Exhibit B" and is prayed to be taken and read as a part hereof), which provided that said Commission "upon its own motion reopened said proceeding for reconsideration" and that said proceedings be assigned for further hearing "with respect to matters passed on by the Court. * * *"

4. On the 22nd day of May 1944, the said Commission did hold the hearing set forth in its order of May 8th and May 18th, at which time the plaintiffs and the intervenor appeared specially and protested against any further hearing or further proceedings in said cause on the ground that the Commission's order of January 18, 1944, embracing its report and findings of said date, had been permanently enjoined by this Court, and as to the propriety and sufficiency of the orders for said hearing. Notwithstanding the protests of the plaintiffs and the intervenor, the Commission proceeded to receive evidence purporting to bear upon the intrastate character of the operation of certain of the parties only, namely, intervenor Alexandria, Barcroft and Washington Transit Company and Arlington and Fairfax Motor Transportation Company and evidences as to the bureaus, commands, and offices located in the Pentagon Building and other Virginia installations; which evidence was cumulative only of the evidence in the prior record in said proceedings.

5. Thereafter the said Interstate Commerce Commission issued a supplemental report dated June 12, 1944, which reaffirmed its report and findings dated January 18, 1944, which were a part of the order of the Commission enjoined by this Court, and asserted its disagreement with this Court's finding that plaintiffs and intervenor were engaged in intrastate commerce over the entire lengths of the lines involved, argued the matter of commutation fares and reaffirmed its conclusion that the application of the Interstate Commerce Act to the transportation involved is
1836 necessary to carry out the national transportation policy, but made no additional or basic findings to support such conclusion.

6. On the same day, June 12, 1944, the Commission issued a supplemental order, and incorporated therein, by reference, its report and findings of January 18, 1944, and directed the plaintiffs and the intervenor to establish the same fares and joint arrangements prescribed by the order of January 18, 1944, which had been permanently enjoined by this Court on May 15, 1944.

7. The supplemental report and order of June 12, 1944, is in all respects, except for the argumentative features and language,

the same as the report and order of January 18, 1944. The supplemental report states the subject matter of the proceeding (Sheet 1); states the provisions of Sec. 203 (b) (7a) 8 of the Act and the Commission's findings relative to that Section in the prior report (Sheet 2); describes the order of this Court (Sheet 2); argues the question of res judicata (Sheets 2, 3, 4); repeats the findings of the prior report as to the low salaries of War Department employees, the alleged dissatisfaction caused by the fares and the interest of the Secretaries of War and Navy in the matter (Sheet 2); states upon further examination of the record the low salaries of classes of War Department employees, describes certain evidence as to dissatisfaction with the fares, and recites the importance of war work being done at the Virginia installations (Sheet 4) (all of which were found in the prior order of January 18, 1944); discusses the text and meaning of the Act relating to the national transportation policy (Sheet 5); finds that respondents are not engaged in intrastate commerce throughout the entire length of their lines (Sheet 6) (a finding directly contrary to the finding by this Court); argues the question of commutation fares (Sheets 9–10); states its four final conclusions,
1837 merely repeating and specifically affirming its prior report (Sheet 11). The Commission made no new, additional, or different findings from the findings of January 18, 1944, which this Court heretofore found fatally insufficient. It merely argued that this Court was in error.

8. An affidavit as to the certified supplemental record of the proceedings before the Commission at the further hearing on May 22, 1944, and the supplemental record are filed herewith and prayed to be taken as a part hereof.

9. Plaintiffs and intervenor allege and charge that the supplemental order of the Interstate Commerce Commission of June 12, 1944, is null and void because in violation of the order of this Court entered May 15, 1944, and because said order is also unreasonable, arbitrary, and contrary to the evidence and in excess of the statutory authority of the Commission; and said reopened proceedings and further proceedings represent a flagrant disregard of the Order of this Court, a failure and refusal to follow the statutory provisions for appeal and constitute a frivolous proceeding to circumvent the injunction issued by the Court. Plaintiffs and the intervenor respectfully pray that the Court make more specific and clear the language of its order of May 15, 1944, so as to include by direct reference the supplement order of the Commission of June 12, 1944, or that the Court enter a supplemental order to the same effect.

MOTION FOR INTERLOCUTORY ORDER

Plaintiffs and the intervenor move the Court for an interlocutory order in the above-entitled cases, suspending pendente lite the effective dates of the order of the Interstate Commerce Commission, dated June 12, 1944, Docket No. 28991, and enjoining the defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, pending the final determination of the Motion To Amend filed herewith, from enforcing or attempting to enforce said order of the Interstate Commerce Commission.

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The grounds in support of this motion are:

1. The order of the Commission of June 12, 1944, purports to be a valid order. Plaintiffs and the intervenor maintain that it is invalid as in violation of the decree of this Court. Unless the status quo is maintained by the Court pending disposition of the Motion, herewith filed, to amend by making more specific and certain the decree of the Court, plaintiffs and the intervenor will be required either (1) to post with the Commission schedules of new rates of fare on or before July 20, 1944, and to conform wholly to said order by August 1, 1944; or (2) to risk the imposition of heavy penalties; or (3) to petition this Court for a citation of contempt.

2. Immediate and irreparable injury, loss, and damage would result to plaintiffs and the intervenor by reason of the requirements of said order as more particularly set forth in the verified complaint filed herein with respect to the order of the Commission of January 18, 1944. Compliance with the order of the Commission would require plaintiffs to establish the fares and joint arrangements therein prescribed contrary to the objections and points raised by the several plaintiffs and the intervenor Alexandria, Barcroft and Washington Transit Company in their original complaints herein, which said objections and points were not passed upon or decided by this court, and would, moreover, involve a complicated rearrangment of fares, the designing, printing, or other production, and distribution of tickets or tokens, the completion of intercompany arrangements between all the plaintiffs and the intervenor as to the division of joint fares, and other complicated transactions, which would have to be reversed in a short time if the decision of the Court upon the merits be in accord with the contention of plaintiffs and the intervenor. Moreover, if the fares are now changed to the schedule ordered by the Commission, and after a short period changed back again, great public confusion would ensue which would cause great harm and irreparable damage to plaintiffs and the intervenor. Furthermore, if the plaintiff, Capital Transit Company,

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should be required to carry on its Pentagon operations without compensation for any period, and if the other parties are required to carry on their operations in compliance with the order of the Commission, no means or methods is available to them for recouping such expenditures and the loss thus suffered would be irreparable; and any judgment which this Court may later render on final determination of this cause will be ineffective;

3. Orderly procedure and the interests of justice require that enforcement of the order of the Commission of June 12, 1944, be specifically enjoined by the Court pending its disposition of the matters presented by the principal Motion herewith filed.

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F. K. LANE,
WILMER A. HILL,
HUGH H. OBEAR,
Attorneys for Arlington and Fairfax Motor Transportation Company.
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FREDERICK G. HAMLEY,
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Attorneys for State Corporation Commission of the State of Virginia.

1842 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Memorandum in support of motion for amendment of order of court entered May 15, 1944, or for order supplemental thereto, and for interlocutory order pendente lite

Filed June 29, 1944

On May 1, 1944, this Court held void an Order of the Interstate Commerce Commission dated January 18, 1944, and on May 15,

1944, permanently enjoined the enforcement of that Order. Thereafter, on June 12, 1944, the Commission issued a 1843 supplemental report and order containing the same findings and requirements as were set forth and ordered by the Commission in its report and order of January 18, 1944.

The Order of the Commission of June 12, 1944, is violative of the injunction order of this Court dated May 15, 1944, as will more clearly appear by reference to the motion filed herewith.

Under Rules 65 (d) and 1 of the Federal Rules of Civil Procedure, this Court should specifically include in its order of injunction of May 15, 1944, the Order of the Commission dated June 12, 1944.

Respectfully submitted.

E. BARRETT PRETTYMAN,
Attorney for Capital Transit Company.
F. K. LANE,
WILMER A. HILL,
HUGH H. OBEAR,
Attorneys for Arlington and Fairfax Motor Transportation Company.
J. NINIAN BEALL,
Attorney for Washington, Virginia & Maryland Coach Company, Inc.
ROBERT E. QUIRK,
R. S.
Attorney for Alexandria, Barcroft and Washington Transit Company.
H. E. KETNER,
R. S.
FREDERICK G. HAMLEY,
R. S.
Attorneys for State Corporation Commission of the State of Virginia.

1846 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Answer of Interstate Commerce Commission in opposition to motion of plaintiffs for amendment of order of court entered May 15, 1944, or for order supplemental thereto, and for interlocutory order pendente lite

Filed July 5, 1944

1847 To the honorable JUSTIN MILLER, the honorable JENNINGS BAILEY, the honorable F. DICKSON LEITH, Justices constituting a statutory three-judge Court:

Comes now the Interstate Commerce Commission and, in answer to the plaintiffs' motion asking, with respect to the Court's order of May 15, 1944, enjoining the Commission's order of January 18, 1944, entered in Docket No. 28991, that the Court amend, or supplement, its said order so as to enjoin also the Commission's order of June 12, 1944, the Commission answers and says:

1. Answering paragraph 1 of the motion, the Commission admits and alleges that following the filing on May 1, 1944, of the Court's decision herein and prior to the entry of the decree, the findings of facts and conclusions of law, it made and entered the order of May 8, 1944, reopening its proceeding in No. 28991, a copy of which is annexed as Exhibit A to the motion. Except as so admitted and alleged, the Commission denies the allegations of the paragraph.

2. The Commission admits the allegations of paragraph 2.

3. The Commission admits the allegations of paragraph 3 with respect to its corrected order of reopening of May 18, 1944, except that it respectfully refers the Court to the copy thereof, annexed as Exhibit B to the motion, for full and correct information as to its contents.

4. Answering paragraphs 4 to 9, inclusive, of the motion, the Commission admits and alleges that, on June 12, 1944, it issued and entered in No. 28991, its supplemental report referred to in paragraph 5 of the motion and its order referred to in paragraph 6, certified copies of which are hereto attached and made a

1848 part hereof, marked "Exhibit A"; that prior thereto it held the hearings referred to in paragraph 4 of the motion; that at said hearings the plaintiffs and intervener appeared specially

and moved for discontinuance of the proceeding on grounds appearing in the supplemental report; that, as shown in the said report, the presiding Commissioner denied the motions only so far as necessary to permit the hearing to proceed, and they were subsequently denied by the Commission when issuing its report; that, in support of its conclusion to deny the motions, the Commission gave full consideration to the grounds therefor advanced by the plaintiffs and intervener and made full findings and statement of its reasons; that, at the further hearings, further evidence was introduced with respect to the matters to which such hearings were confined, namely, the question as to whether application of the provisions of the Act to the transportation involved was necessary to carry out the national transportation policy and the question as to whether the said transportation was exempt under section 203b (8) of the Interstate Commerce Act; that, in reaching its conclusions upon those questions in the supplemental report, it gave careful consideration to such evidence and the other evidence already of record and made detailed findings and statement of reasons; that, in acting upon the said questions and issues and in reconsidering the other questions and issues involved in the proceeding, it accorded the full hearing provided for in the Act; that at the original and further hearings a large volume of testimony and other evidence was introduced; that it gave full consideration thereto and to the argument submitted by counsel of the parties and, thereupon, entered and duly served upon the parties to the proceeding its said supplemental report and its order of June 12, 1944.

1849. The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel; that said report and order of June 12, 1944, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the plaintiffs' motion filed herein.

Further and affirmatively answering the motion and particularly its allegations that the reopened proceeding was in conflict with the Court's order and constituted failure to follow the statutory procedure, the Commission says:

1. That the motion is "clouded" in its statement, or description, of the Court's order and decision; that the Court made two holdings, the one being that the Commission did not make the findings necessary to support its conclusion that application of the provisions of the Act to the transportation involved was necessary to carry out the national transportation policy, and the other being that, except as there was such necessity, the said transportation was exempt from the Commission's jurisdiction by reason of section 203 (b) (8) of the Act; that it is manifest that these two holdings taken together mean that, upon the making of the findings
referred to in the first holding, the Commission would be
1850 clothed with jurisdiction; that, as shown by many precedents, where an order of the Commission is set aside upon a holding of inadequacy of findings, its reopening of the proceeding because thereof is not in conflict with, but wholly responsive to, the holding; that since it (the Commission) was convinced the Court was right in holding that it had not made adequate findings, it would not have been justified in appealing therefrom; and that the course which it followed of immediately reopening the case did not constitute failure to follow the statutory procedure but, on the contrary, was squarely in line with its special purpose of expediting the Court review of action of the Commission and also with the duty of the Government and Commission not to burden the Supreme Court with unnecessary appeals.

2. The Commission further says, with respect to the Court's other holding that the transportation involved was exempt under section 203 (b) (8) of the Act, that, while it is believed that the question of exemption under the said provision was one of law, it is a question of basic jurisdiction depending largely on facts; that where in such case, and, as here, it is of the view that the record of facts, or its report, is in need of amplification or clarification, it believes that it is expected to take corrective action and not to appeal in such condition of the record; that any other rule (whether of res judicata or other doctrine designed especially to fit private litigation) would be contrary to the public interest and generally in conflict with the objectives of the special procedure for review of Commission action; that, in the situation here, the inapplicability is particularly apparent of any rule which would require the Commission to appeal from the legal
holding respecting its jurisdiction and meantime delay re-
1851 opening responsive to the holding of inadequacy of findings to support its conclusion of jurisdiction under the national transportation policy; that, in any event, the plaintiffs' allegation that the reopening of the proceeding as to the legal question was in conflict with the Court's order, proceeds upon the assump-

tion that it is a settled question that the Commission may not reopen in the circumstances to which it points, whereas the facts are that, to the extent there is doubt of its authority, the question is a very live and important one; that, accordingly, while disagreement with the Commission's views that it had authority to reopen as to the legal question of jurisdiction warranted allegations of error, it did not warrant allegations of action contrary to the Court's order, or warrant plaintiffs' prayer to the effect that the said order be made without more to enjoin the Commission's order of June 12, 1944; that, since the reopening directly responsive to the holding of inadequacy of findings was one, which upon the curing of the defect, would clothe the Commission with jurisdiction, it is evident that, even should the Court hold the Commission to have erred as to the question of the other source of jurisdiction, that would not foreclose, or defeat, the jurisdiction which the Commission exercised; that, however the Commission earnestly avers and urges that it had the authority and duty to reopen as to the latter question, as well as the former, and it respectfully refers the Court to its supplemental report, wherein the matter is more fully developed.

Further answering, the Commission says that, except as the plaintiffs' motion may be taken to constitute a new bill of complaint seeking the setting aside of the order of June 12, 1944, it is wholly without substance, the relief prayed outside the Court's authority and the motion generally dilatory. And, further
1852 and more particularly answering the motion with respect to its general allegations contained in paragraphs 7 and 9, that the Commission's order is invalid because of inadequate findings and because unreasonable, contrary to the evidence and in excess if its authority, the Commission, specifically denies those allegations, and it also says that those allegations, inter alia, constitute the pleading a new bill of complaint.

Further and more particularly answering the motion for interlocutory injunction, the Commission denies that its order of June 12, 1944, is in violation of the decree of the Court and denies that the plaintiffs and intervener will suffer immediate and irreparable injury, loss and damage unless the order is specifically enjoined pending disposition of the matters presented by the principal motion.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that the said motions be dismissed in the respects that they charge and ask for relief on the ground that the Commission's order is contrary to, or violative of, the Court's decree, or order, and that in all other respects the motions be treated as a

new bill of complaint seeking the setting aside of the Commission's order of June 12, 1944, and an interlocutory injunction pending determination of the suit.

INTERSTATE COMMERCE COMMISSION,
DANIEL W. KNOWLTON,
By Daniel W. Knowlton,
Chief Counsel.

JULY 1944.

1866 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Points and authorities on behalf of the United States in opposition to plaintiffs' motion to amend language of order entered May 15, 1944, or to issue order supplemental thereto, and for interlocutory order pendente lite

Filed July 5, 1944

STATEMENT

On May 15, 1944 this court issued its order, together with findings of fact and conclusions of law permanently enjoining an order of the Interstate Commerce Commission dated January 18, 1944 in Docket No. 28991 (256 I. C. C. 791). The Commission's
1867 order required the plaintiff motor carriers to reduce their single line fares between the District of Columbia and various military and naval installations in neighboring Virginia, and also prescribed reasonable joint rates for application between such points over the lines of the Capital Transit Company and the various other motor bus plaintiffs. This order was responsive to a previously filed written opinion of the court. This opinion, the findings of fact, and conclusions of law all make it abundantly clear that though numerous attacks had been made by plaintiffs upon the Commission's order, the court, without disposing of all these contentions, was setting the order aside solely upon the two following grounds: (1) That the Commission had improperly held that this transportation was not excluded from regulation by virtue of the municipal zone exemption contained in Section 203 (b) (8) (49 U. S. C. 303 (b) (8)) of the Interstate Commerce Act because it had found that the plaintiffs were not engaged in intrastate transportation over the entire length of their inter-

state routes; and (2) that the Commission had not made subordinate findings of fact to support its conclusion under Section 203 (b) (7a) that application of the Act to this transportation, despite this exemption, was necessary to carry out the national transportation policy declared in the Act.

By order of May 8, 1944, as corrected by order of May 18, 1944 (Exhibits A and B to plaintiffs' motion) the Commission recognized that its previous order had been invalidated by this court, but set the case for further hearing with respect to the above two matters passed upon by the court, and for general reconsideration. Such further hearing was held on May 22, 1944, at which witnesses appeared on behalf of the War Department, the Navy Department, and the Commission's Bureau of Industry. Plaintiffs
1868 appeared specially and moved to dismiss on the grounds that the matters placed in issue were res judicata by reason of the decision of this court. They offered no evidence but cross-examined the witnesses of the other parties.

On June 12, 1944 the Commission issued a supplemental report and order on rehearing and consideration (attached hereto as Exhibit A). This supplemental report rejects the contention that these issues were res judicata. It specifically discusses at length, and contrary to plaintiffs' statements, makes subordinate findings on, the question of removal of the commercial zone exemption in the interests of the national transportation policy. In addition it specifically discusses at length the extent to which plaintiffs are engaged in intrastate or intra-District transportation over their interstate lines, and concludes that none of them were so engaged over the entire length of their interstate lines. It also considers the status of the prescribed fares as commutation fares[1] and concludes that they were not such, but that even if they were the Commission had power to compel their adoption. Finally, it makes the following ultimate findings and conclusions: (1) That this transportation was not excluded by the exemption provision of Section 203 (b) (8); (2) that the application of the provisions of the Act was necessary to carry out the national transportation policy; (3) that the findings and conclusions in the prior report were affirmed; and (4) that in view of the existing emergency the
1689 fares found reasonable should be made effective as soon as practicable, on 10 days' rather than 30 days' notice. The accompanying order directs the establishment of these fares on or before August 1, 1944 on 10 days' notice.

Plaintiffs' motion seeks to amend this court's previous order so as to enjoin the order of the Commission of June 12 on the sole

[1] This was because of the fact that plaintiffs had contended before this court that these fares were commutation fares which the Commission could not prescribe. The majority of the Commission did not deal with this problem in the first report, nor did this court pass upon it in its opinion.

ground that the Commission in rehearing and reconsidering, in the proceedings leading to that order, the two questions passed upon by this court disregarded the mandate or order of the court.

I

The Commission's Action in Considering and Making Findings on the Question of Removal of the Exemption Proviso in the Interests of the National Transportation was Responsive to Rather Than in Disregard of This Court's Order

The Supreme Court has recently pointed out that it is familiar practice for courts, in reviewing the orders of administrative bodies, to remand causes to the administrative agency for further proceedings without deciding the merits, where justice demands that course in order that some defect in the record, as a want of essential findings, may be corrected. Ford Motor Co. v. Labor Board, 305 U. S. 364, 373. Obviously, if this court had specifically remanded this case to the Commission to make subordinate findings in connection with its former ultimate findings that removal of this exemption proviso was required by the national transportation policy, the Commission's action in rehearing, reconsidering, and making such findings would have been merely responsive to the court's order. Here, while there was no specific remand to make findings, it is plain that the court in its previous opinion did not mean to foreclose the Commission from making the necessary findings but merely to hold that it had not made them. Thus the opinion stated:

"Inasmuch, then, as we are of the opinion that the Commission had no jurisdiction, unless it be necessary to carry out the national transportation policy, and, as the Commission has made no findings to support that conclusion, the order of the Commission should be set aside."

1870 And this court overruled conclusion of law No. 4 proposed by plaintiffs to the effect that there was no evidence before the Commission upon which such findings could be predicated. The court's opinion was as much of an open invitation to the Commission to reconsider the question and make findings thereon as if there had been a formal remand, and the Commission's action in doing so is no more in disregard of the mandate than if there had been a specific remand. Furthermore, it is the Commission's consistent practice, and the practice of other administrative agencies to reopen cases for further consideration and the making of new findings where an order has been set aside for lack of findings or some other purely procedural defect whether or not

there has been a formal remand. And in a number of such cases the order of the administrative agency entered after the case had been reconsidered and findings made has ultimately been sustained by the courts on the merits. Thus the Commission's orders set aside for lack of findings in Florida v. United States, 282 U. S. 194; Thompson v. United States, 16 F. Supp. 752; and Byers Transportation Co. v. United States, 48 F. Supp. 550, were sustained in Florida v. United States, 292 U. S. 1; Thompson v. United States, 20 F. Supp. 827; Byers Transportation Co. v. United States, 49 F. Supp. 828. And the order of the Secretary of Agriculture set aside in Morgan v. United States, 298 U. S. 468, 304 U. S. 1, for want of a fair hearing, was ultimately approved on the merits when such a fair hearing had been held. United States v. Morgan, 313 U. S. 409.

Plaintiffs' further contention that the Commission was powerless to correct the errors which the court had found in its procedure, and was relegated solely to attacking the order on appeal, is utterly at odds with the traditional ideas of judicial administration. If, as the above cases hold, the Commission may correct its findings after the Supreme Court has spoken, it can do so equally well after the district court has set aside an order
1871 without taking an appeal. Any other view would promote only unconscionable delay.

II

The Commission's Action in Rehearing and Redeciding the Question of Whether Plaintiffs Were Engaged in Intrastate Transportation Over the Entire Length of Their Interstate Lines Was Also Not in Disregard of This Court's Order

If this court decides, as we submit it should, that the Commission was entitled to make the subordinate findings above considered, and that the subordinate findings made meet the objections of this court's previous decision, it is unnecessary to consider whether the Commission disregarded the court's order in rehearing and redeciding the question of plaintiffs' intrastate operations. But even in rehearing and redeciding this latter question the Commission did not act in defiance of the court order.

This court, it is true, in finding of fact No. 7 found that all of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction. The Commission on rehearing, at which it received as new evidence the orders of the District Public Utilities Commission specifically setting forth the scope of the District

operations of the Virginia lines, concluded to the contrary with respect to such lines. And it likewise concluded to the contrary with respect to the Transit Company upon reconsideration of the old record, though no new evidence was introduced with respect to that company at the new hearing.

Viewing the court's previous findings, opinion, and order in the light of the well-settled judicial role in reviewing administrative action, it is plain that the Commission's subsequent action was not in unlawful disregard of the court's holding. In reviewing,
1872 under the Urgent Deficiencies Act, the action of the Commission, a court it not empowered to take evidence de novo but must decide the case only on the record before the Commission except where a Constitutional jurisdictional issue of fact is presented. Louisville & Nashville R. Co. v. United States, 245 U. S. 463, 466; National Broadcasting Co. v. United States, 319 U. S. 190, 227. Consistently with this practice, plaintiffs introduced before this Court in the present case solely the record before the Commission at the first hearing. Another cardinal rule of judicial review of orders of the Commission is that the Court's function is reviewing factual determinations of the Commission is to decide the single question of law, whether the determination is supported by substantial evidence of record. Interstate Commerce Commission v. Union Pacific Ry. Co., 222 U. S. 541, 547; Western Chemical Co. v. United States, 271 U. S. 268, 271. With these principles in mind we believe that this Court's previous holding must be construed merely to be that there was not on the former record before the Commission substantial evidence to support the Commission's finding that plaintiffs were not engaged in interstate transportation over the entire length of their interstate lines here in question. Obviously the making of the same finding by the Commission on the old record supplemented by a new record is not at all inconsistent with the Court's determination or in defiance of its order.

Though at the rehearing no new evidence was actually taken with respect to Capital Transit Company's intrastate operation in Virginia, we submit that the Commission's reaffirmation of its finding that this company was not engaged in intrastate transportation in Virginia, must be considered also to have been made in a spirit of cooperation rather than in one of defiant disregard of the Court's order. It is to be remembered that the strict rules
1873 governing mandates from court to court do not apply where the order is from court to administrative agency. As the Supreme Court has put it in Federal Communication Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 141:

"The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Congressional power, exercised through a delegated agency can be controlled within the limited scope of 'judicial power' conferred by Congress under the Constitution."

And as it was said by that Court in United States v. Morgan, 313 U. S. 409, 422:

"It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice, and the appropriate independence of each should be respected by the other."

In particular, action by the Commission comparable to that in the present case was sustained by a three judge court speaking through Justice Learned Hand, in Baltimore & Ohio Ry. Co. v. United States, 24 F. Supp. 734. At page 735 the court said:

"The defendants argue that the record now at bar is substantially different from the first * * * There are indeed some differences, but in the view we take they are not important, and we may refer to the statement of facts made in the former case as sufficient for our present discussion. In our first opinion we spoke of the effect of 'transits' upon such situations as those at bar, and declared that they could 'never be used as a constitutive element' of the power to regulate interstate commerce. This conclusion the defendants ask us to change, and it is reasonably clear that the Commission not only did not agree with us, but declined to follow us, and entered the order now on appeal for that reason. Upon further consideration we have come to believe that they are right and that we were wrong."

We are confident that when the Court reviews the Commission's second report dealing with Capital Transit Company it will 1874 conclude that it was likewise in error[2] when it held that the Transit Company is engaged in any intrastate operations over its interstate line in Virginia.

[2] It should be emphasized by way of apology that defendants did not argue and brief this point, insofar as it related to Capital Transit Company, at the former hearing before this Court, because it was believed that the Transit Company conceded that it was not engaged in any intrastate transportation over its Virginia lines. We think that because of this neglect on our part the Court may have fallen into some misapprehension as to the Transit Company's operation in Virginia as is indicated by the following statement in its opinion:

"The fact that the Capital Transit Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate."

It seems quite clear from the record, however, and we think that counsel for the Transit Company will admit, that the Transit Company's only stop in Virginia is at the Pentagon Building, and that all passengers are carried between that stop and points in the District.

It is respectfully submitted, therefore, that plaintiffs' motion should be denied.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

WENDELL BERGE,
Assistant Attorney General.

1891 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Motion on behalf of the United States for new trial and new judgment dismissing the complaints

Filed July 5, 1944

Now comes the United States of America, defendant herein, and under Rule 59 (a) and (b) of the Federal Rules of Civil Procedure moves this court to grant a new trial of this cause and to direct the entry of a new judgment dismissing the complaints.

As reasons for this motion defendant says:

1892 1. On May 15, 1944 this court entered an order permanently enjoining an order of the Interstate Commerce Commission, dated January 18, 1944, which directed plaintiffs to reduce their single line fares between the District of Columbia and various military and naval installations in neighboring Virginia, and also prescribed reasonable joint rates for application between such points over the lines of the Capital Transit Company and the various other motorbus plaintiffs.

2. This court's order, as is indicated by the court's written opinion, findings of fact, and conclusions of law, was based solely on the following two grounds:

(a) That the Commission had improperly held that this transportation was excluded from regulation by virtue of the municipal zone exemption contained in Section 203 (b) (8) (49 U. S. C. 303 (b) (8)) of the Interstate Commerce Act, because it had improperly found that plaintiffs were not engaged in intrastate transportation over the entire length of their interstate lines; and

(b) That the Commission had not made the necessary subor-

dinate findings of fact to support its ultimate finding under Section 203 (b) (7a) that application of the Act to this transportation, despite the exemption, was necessary to carry out the national transportation policy declared in the Act.

3. By order of May 8, 1944, as corrected by order of May 18, 1944, the Commission recognized that its previous order had been invalidated by this court, but set the case for further hearing on the above two matters previously passed upon by this court.

4. Such rehearing was held on May 22, 1944, and a supplemental record was made.

5. On June 12, 1944 the Commission issued a supplemental report and order on rehearing and reconsideration (attached as Exhibit A to reply of defendant United States to plain-
1893 tiffs' motion to amend the order) which reaffirms the Commission's order of January 18, 1944, and requires the establishment of these same rates, on or before August 1, 1944 on 10 days' filing and posting.

6. The report of the Commission on reconsideration and rehearing contains adequate subordinate findings to support the Commission's ultimate finding that application of the Interstate Commerce Act to this transportation is necessary to carry out the National Transportation Policy; it also properly finds on a new or reconsidered record that none of the plaintiff carriers is engaged in intrastate transportation over the entire length of its interstate lines.

7. This amended report thus constitutes newly discovered material evidence of a type not purely cumulative in the light of which this court's previous decision must necessarily be reconsidered, if, as plaintiffs urge in their motion, the court's order of May 15, 1944 is to be amended so as to apply to the Commission's subsequent order.

8. Counsel for defendant could not on the face of things by due diligence have brought this changed situation to the court's attention by filing a motion for new trial within the general period of 10 days after the entry of judgment prescribed by Rule 59 (b). Accordingly, and since the motion is based on newly discovered evidence, defendant is entitled by the express provision of Rule 59 (b) with leave of court to file this motion before the expiration of the time for appeal. The appeal time in the present case does not expire until 60 days after the entry of judgment (28 U. S. C. 47a) or on July 14, 1944.

9. Defendant believes that the present report of the Commission amply meets the objections voiced to the first report of the Com-

mission by this court, and requires the present disposition in defendants' favor of the issues previously decided in plaintiffs'
1894 favor by this court. Defendant also submits that the other issues briefed, and argued before this court at the first hearing, but not yet decided by the court, should now also be decided in defendants' favor without further argument on such points, and that, as authorized by Rule 59 (a), a new judgment dismissing the several complaints should be entered.

Respectfully submitted.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.,
Counsel for the United States.

WENDELL BERGE,
Assistant Attorney General.

1907 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Actions Nos. 23420, 23421, 23422, 23423

Stipulation

Filed Aug. 3, 1944

It is hereby stipulated by and between counsel for the plaintiffs, Capital Transit Company, Arlington and Fairfax Motor Transportation Company, Washington, Virginia & Maryland Coach Company, Inc., State Corporation Commission of the State
1908 of Virginia, and the intervenor, the Alexandria, Barcroft and Washington Transit Company, and counsel for the defendant the United States of America and counsel for the defendant the Interstate Commerce Commission as follows:

1. That the stenographic record before the Interstate Commerce Commission in the matter of: "Passenger Fares Between the District of Columbia and Nearby Virginia," Docket No. 28991, at Washington, D. C., on November 9, 1943, pages 1265–1380, containing the oral arguments made before the Commission, a copy

of which is attached hereto, may be admitted as part of the record in the above-entitled cases.

Washington, D. C., July 31, 1944.

E. BARRETT PRETTYMAN,
Attorney for Capital Transit Company.
HUGH H. OBEAR,
Attorney for Arlington and Fairfax Motor Transportation Company.
J. NINIAN BEALL,
Attorney for Washington, Virginia & Maryland Coach Company, Inc.
R. E. QUIRK,
Attorney for Alexandria, Barcroft and Washington Transit Company.
FREDERICK G. HAMLEY,
Attorney for State Corporation Commission of the State of Virginia.
DANIEL W. KNOWLTON,
Attorney for Interstate Commerce Commission.
ROBERT L. PIERCE,
United States of America.

1909 In the District Court of the United States for the District of Columbia

[File endorsement omitted.]

Civil Action 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before ARNOLD, Associate Justice, United States Court of Appeals, District of Columbia; and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court.

Opinion

Filed Aug. 25, 1944

BAILEY, J.:

These causes have been heard on the motion of the various carriers to amend the order of this court entered on May 15, 1944, enjoining the enforcement of the order of the Interstate Commerce Commission of January 18, 1944, so as to provide for the issuance of an order enjoining the enforcement of a subsequent order of the Interstate Commerce Commission of June 12, 1944; and also a motion of the United States for a retrial of these causes and a modification of the order of this court of May 15, 1944.

1910 At the hearing of the foregoing motion it was stipulated by all parties in open court that Justice Thurman W. Arnold of the United States Court of Appeals of the District of Columbia might sit in lieu of Justice Justin Miller who was absent from the District.

In its opinion and findings of fact of this court filed on May 1, 1944, the court held in substance that the Interstate Commerce Commission was without jurisdiction to make its order of January 18, for the reason that the carriers were engaged in intrastate commerce throughout the entire length of their lines and that the Interstate Commerce Commission had not made findings of fact sufficient to justify its conclusion that it had jurisdiction because

its action was necessary to carry out the national transportation policy.

Without applying to this court for a modification of the order of this court of May 15, 1944, the Commission proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this court. Although it is rather difficult to understand the conduct of the Commission in undertaking to put into effect an order this court had enjoined, we have nevertheless taken into consideration the new report of the Commission and the evidence upon which it is based.

As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

As to the new evidence and findings of fact upon which the Commission undertakes to conclude that it has jurisdiction because it "is necessary to carry out the national transportation policy," the Commission bases its conclusion chiefly on the finding that
1911 the employees of the Pentagon are dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, apart from the fact that the dissatisfaction of the employees with the fares charged by the carriers is ground for finding that their reduction is necessary to carry out the national transportation policy, there is a mere scintilla of evidence to support this finding. The Commission's findings were that many of the passengers to the Pentagon are low-salaried employees of the Government and that a representative group of them were dissatisfied with the fares. As to the latter finding, it clearly appears that the proportion of turnover of employees at the Pentagon did not exceed the average in government departments, and in only a very few instances did employees give the rate of fares as the cause of their dissatisfaction.

It must be observed that there has been no raising of fares by the carriers whereby the national transportation policy has been affected.

As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

We hold that the facts found by the Commission do not support its conclusion that its taking jurisdiction is necessary to the national transportation system.

The motion of the United States for a new trial should be overruled and the order of the Commission of June 12, 1944 be set aside and its enforcement permanently enjoined.

JENNINGS BAILEY.
F. DICKINSON LETTS.

1912 *Dissenting opinion*

ARNOLD, J., dissenting: This case arose out of a complaint by the Secretaries of War and the Navy concerning the fares charged by the Capital Transit Company and other companies engaged in carrying employees across the District Line to the Pentagon Building, and other military installations in Virginia. After the complaint was received the Interstate Commerce Commission instituted its own investigation and held hearings. It finally ordered that the Capital Transit Company carry passengers to the Pentagon Building for a cash fare of 10¢ or a fare of 8⅓¢ if commutation tickets were purchased, and that a joint fare between the companies involved in this case be fixed at $1.60 for twelve one-way trips, including transfer privileges.

By a former decision of a three-judge court in these proceedings this order of the Commission was set aside. That court held (1) that the Commission had no jurisdiction to fix the rates or to establish joint fares because the operations were wholly within the commercial zone designated by the Interstate Commerce Commission and there was intrastate transportation over the entire interstate lines; [1] and (2) that the Commission had made no findings to support its conclusion that its jurisdiction was necessary in the interests of the national transportation policy. After
1913 this decision the Commission held further hearings and made supplemental findings to the effect that the exercise of the Commission's jurisdiction was necessary in the national defense. It then issued a second order putting into effect the rates previously enjoined in this court. It is that second order which plaintiffs seek to enjoin in this case.

The opinion of the majority that the Commission has no jurisdiction to issue an order regulating the transportation in this case seems to me clearly in error. The statute plainly gives the Commission jurisdiction over the transportation of passengers in interstate or foreign commerce within a municipality or between contiguous municipalities or zones commercially a part of a mu-

[1] See 49 U. S. C. A. 303 (b) (7a) (8).

nicipality to the extent that the Commission shall find it necessary to carry out the national transportation policy declared in the Act. This explicitly covers transportation between the District of Columbia and the Pentagon Building in Virginia.

This national transportation policy which the Commission finds it necessary to carry out is defined by an amendment to the Interstate Commerce Act in 1940.[2] Insofar as the policy relates to national defense the declared intention of Congress is to provide for a fair and impartial regulation of all modes of transportation "to promote safe, adequate, economical, and efficient service * * * to encourage the establishment and maintenance of reason-
1914 able charges * * * all to the end of developing, coordinating, and preserving a national transportation system * * * to meet the needs * * * of the national defense." The Commission has found in unequivocal terms that the regulation of fares from the District of Columbia to the general headquarters of the Army in the Pentagon Building in Virginia is necessary in the national defense. Unless these findings are arbitrary and unreasonable the jurisdiction of the Commission in this case is beyond question.

Even in the absence of evidence, judicial notice of the intimate connection of the work done at the Pentagon Building and the other installations with the operation of our armies in the field would seem sufficient support for the findings relating to the Commission's jurisdiction over the transportation of the thousands of employees who are part of our national military headquarters. But, in addition, we have the testimony of responsible Army and Navy executives, backed up by the opinions of the Secretary of War and the Navy, that the Commission's regulation is necessary to the national defense. It is true that, for the most part, this testimony is opinion evidence. But, the factors which contribute morale and efficiency in the armed services can only be based upon opinion since they relate to the future operations. They can never be statistically proved. For a three-judge court, without experience in or responsibility for military organization, to im-
1915 pose its own ideas of whether federal regulation of military transportation is necessary in the national defense against the judgment of the men who are responsible for the morale and discipline of our armies is unwarranted in time of peace and reckless in time of war.

The informed opinion of such men is all we have to guide us in military matters. The testimony of those responsible for our military organization is unanimous that military efficiency requires unified federal regulation of the transportation of military per-

[2] 54 Stat. 899 (1940), 49 U. S. C. A. preceding Sec. 301.

sonnel from the District of Columbia to general headquarters across the state line rather than the uncoordinated control by independent local commissions, none of which have jurisdiction over the entire route. Certainly this judgment seems reasonable on its face. Nothing in the record gives this court the slightest justification for disregarding it.

The reasoning on which the majority base their refusal to follow the testimony of military experts that the Commission's regulation was necessary in this case is based upon a peculiar interpretation of the word "necessary" as it is used in Section 303 (b). That section directs the Commission to apply the Act to interstate transportation within a municipal area "to the extent that the Commission from time to time find that such application is necessary to carry out the national transportation policy." The majority hold that as a matter of law no necessity for federal regulation of military transportation can exist until it is evident "that the war work of the government is materially affected." In other words, it is never permissible for the Commission to regulate in order to plan for more efficient military transportation or to avoid future impairment of the military operation. An uncoordinated system or regulation which in the opinion of military experts is dangerous to national defense must be permitted to continue until there is an actual break-down in military transportation. The majority infer that such a break-down must be serious because they lay stress on evidence that the present turn-over of the employees of the Pentagon Building is no greater than the average in government departments and that dissatisfaction has not yet become general. It thus appears that average performance is all that our military command is entitled to strive for in time of war and that the necessity of regulation to promote the maintenance of reasonable rates, as described in the Act, cannot exist until military employees become so dissatisfied that in a time of crisis they begin to desert their posts in substantial numbers. In other words, before the Commission can attempt to perform its duty to promote reasonable rates in the interests of national defense the existing rates must be higher than the traffic will bear.

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Nothing in the Act supports a construction so contradictory to common sense. The language in the Act that the Commission may regulate whenever it is necessary to encourage the establishment and maintenance of reasonable rates does not mean that it must withhold its hand until real harm has been done to the war effort. It is probably true that no measurable harm to the war effort will be occasioned by any rate, however excessive. It is the duty of the general staff to carry on in spite of every difficulty.

1917

culty and it is to be hoped that the personnel attached to military headquarters will be at their posts regardless of personal hardship. But the ability of our military command to carry on in the face of handicaps does not justify this court in denying the Commission an opportunity to make its task easier by following the mandate of the statute to encourage and maintain reasonable rates in aid of national defense.

Assuming the power to regulate, the question of whether the rates are confiscatory is a separate inquiry. However, nothing in the record supports the contention that there is confiscation in the Commission's order. According to the testimony, the average one-way trip involved from the District of Columbia to the Pentagon Building is 6.21 miles, less than half the maximum distance that a person may travel entirely within the District on a single 8⅓¢ token. Further testimony showed that the cost of the entire trip was 7.06¢, which is below the 10¢ cash fare and the 8⅓¢ commutation fare ordered by the Commission. As has been said in St. Joseph Stock Yards Co. v. United States:[3]

1918 "The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established."

The only showing as to confiscation was made by the Capital Transit Company. This was done on the theory that the trip from the District Line to the Pentagon Building could be separated from the entire transportation and its cost separately assessed. This evidence is irrelevant because there is no justification for computing the cost of portions of the trip to the Pentagon Building separately. Under the Act the Commission has jurisdiction over the entire transportation. It must, therefore, consider it as a whole.

The other points raised by plaintiffs do not require extended discussion. It seems clear that the Commission's jurisdiction over the interstate carriage of passengers to the Pentagon Building includes the power to compel joint rates, to issue commutation tickets, or to make any other regulations necessary to carry out the transportation policy in the Interstate Commerce Act.

1919 Finally, I believe that the court is in error in adhering to its former opinion that the Commission had no jurisdiction over the interstate transportation involved in this case because the carriers were also lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route.

[3] 298 U. S. 38, 53 (1936). See also Darnell v. Edwards, 244 U. S. 564, 569 (1917); Los Angeles Gas & Electric Corp. v. Railroad Commission, 289 U. S. 287, 305 (1933).

The findings of the Commission seem to me sufficient to justify its assumption of jurisdiction in this case on the ground that the carriers affected by its order did no substantial intrastate business over the entire length of the interstate routes which were regulated. However, since the jurisdiction in aid of the national defense is so clear it is unnecessary to discuss this aspect of the case in detail. The order of the Commission should be sustained.

THURMAN ARNOLD.

1920 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Findings of fact and conclusions of law

Filed Sept. 20, 1944

Upon consideration of the pleadings, evidence, and argument and supplemental pleadings, evidence, and argument and briefs of counsel the Court makes the following:

1921 *Findings of fact*

1. The Capital Transit Company is engaged in the transportation of passengers for hire by bus and streetcar within the District of Columbia and nearby Virginia, and by bus between two designated termini in the District and the War Department Pentagon Building in the State of Virginia; the Virginia companies, that is, the Arlington & Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Company, Inc., and the intervenor, Alexandria, Barcroft & Washington Transit Company are engaged in the transportation of passengers for hire by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District on the one hand, and points in Virginia, on the other hand; all three of the Virginia companies serve the Pentagon Building; the Navy Annex is served by the Alexandria line and the Arlington line; the Army Annex and the Washington National Airport are served only by the Alexandria line; all of the plaintiff companies and the intervenor operate lines over both the Memorial Bridge and the Highway Bridge; the routes over which the plaintiff companies and the intervenor operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

2. The proceeding before the Interstate Commerce Commission, Docket No. 28991, out of which this action arose, was begun by that Commission at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, for an investigation into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Annex, the Army Annex and the Airport, on the other hand. Following the order of this Court of May 15, 1944, enjoining the order of the Commission of January 18, 1944, the Commission, without applying to this Court for a modification of the order of this Court of May 15, 1944, proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this Court.

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3. The Pentagon Building is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the Fourteenth Street Highway Bridge; the Navy Annex is about two miles south of the Virginia end of the Memorial Bridge and about one mile west of the Pentagon Building; the Navy Annex is reached from the Memorial Bridge over Arlington Ridge Road which does not run by the Pentagon; the Army Annex is on the Mt. Vernon Highway about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

4. By order dated January 18, 1944, the Commission undertook to fix fares between all points in the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Transit Company, and the Pentagon, the Navy Annex, the Army Annex and the Airport, on the other hand, including joint fares between the Capital Transit Company and the Virginia companies. The supplemental order of June 12, 1944, fixed the same fares between the same points.

5. The order dated January 18, 1944, and the order dated June 12, 1944, undertook to extend and expand the District of Columbia fare boundary to include the Pentagon Building so as to permit a passenger to ride to the Pentagon on the lines of the Capital Transit Company from any point in the District of Columbia for the existing District fares established by the Public Utilities Commission of the District of Columbia.

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6. All of the operations involved are performed within the territorial limits of the District of Columbia commercial zone prescribed by the Interstate Commerce Commission, Washington, District of Columbia Commercial Zone, 3 MCC 243.

7. All of the transportation here involved is urban mass transportation within the Washington District of Columbia Commercial Zone.

8. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

9. The Court has not passed upon any of the questions of law raised by the parties other than those set forth in these Findings of Fact and Conclusions of Law.

Conclusions of law

1. This Court has jurisdiction in this proceeding under the provisions of the Act of October 22, 1913; 28 USCA Sec. 47.

2. The Interstate Commerce Commission has no jurisdiction for the purpose of fixing fares or establishing joint fares for the operations here involved since said operations are local and intraterminal in nature and are conducted wholly within the Washington District of Columbia Commercial Zone designated by the Commission in 3 MCC 243.

3. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

1924 4. The Commission has not made adequate findings, either in the original report and order of January 18, 1944, or in the supplemental report and order of June 12, 1944, to support the conclusion that the exercise of its jurisdiction over plaintiffs and the intervenor is necessary to carry out the National Transportation policy.

5. Neither the original record nor the supplemental record contain substantial evidence upon which the Commission could make proper and adequate findings to support the conclusion that the exercise of its jurisdiction is necessary to carry out the National Transportation policy.

6. The Commission had no jurisdiction to issue the order of June 12, 1944.

7. It is unnecessary to pass upon any of the other questions of law raised by the parties.

JENNINGS BAILEY.
F. DICKINSON LETTS.

I dissent from these findings and conclusion of law insofar as they are inconsistent with my dissenting opinion filed in this case.

THURMAN ARNOLD.

1925 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[File endorsement omitted.]

Civil Action No. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Civil Action No. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Order granting permanent injunction

Filed Sept. 20, 1944

These causes came on for hearing on the motion of the various carriers to amend the order of the Court entered on May 15, 1944, enjoining the enforcement of the order of the
1926 Interstate Commerce Commission of January 18, 1944, so as to provide for the issuance of an order enjoining the

enforcement of a subsequent order of the Commission of June 12, 1944; upon the answers of the United States and of the Commission to said motion; upon a motion of the United States for a retrial of the causes and a modification of the order of the Court of May 15, 1944; upon the evidence and record of the proceedings before the Commission, including the evidence and record of the supplemental proceedings before the Commission held in May, 1944; and upon the oral argument and briefs of counsel. And it appearing to the Court that the Commission, in its supplemental order of June 12, 1944, did not make findings sufficient to support its conclusion that the exercise of its authority is necessary to carry out the National Transportation policy, and it further appearing to the Court that the Commission was without jurisdiction to issue the report and order of June 12, 1944, it is by the Court this 20th day of September 1944.

Ordered, That the Order of the Interstate Commerce Commission dated June 12, 1944, in Docket No. 28991, be and it is hereby set aside and permanently enjoined and the defendants, their agents and employees, are hereby permanently enjoined from enforcing or attempting to enforce the rates of fare, joint fares, commutation fares, and other requirements set forth in said order, or any fares whatsoever with respect to the transportation services involved in these proceedings.

THURMAN ARNOLD.
JENNING BAILEY.
F. DICKINSON LETTS.

1927 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action Nos. 23420, 23421, 23422, 23423

Petition for appeal

Filed Sept. 25, 1944

1928 The United States and the Interstate Commerce Commission, defendants in the above-entitled causes, feeling themselves aggrieved by the final decree of the District Court of the United States for the District of Columbia, entered in said Court on the 20th day of September 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

CHARLES FAHY,
Charles Fahy,
Solicitor General.
WENDELL BERGE,
Wendell Berge,
per R. L. P.
Assistant Attorney General.
ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General.
Daniel W. Knowlton,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

1929 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Civil Action 23420, 23421, 23422, 23423

Order allowing appeal

Filed Sept. 25, 1944

1930 In the above-entitled causes, United States and the Interstate Commerce Commission, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in these causes entered on the 20th day of September 1944, and having also made and filed an Assignment of Errors, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed, That the appeal be, and the same is hereby, allowed as prayed for.

Dated September 20th 1944.

THURMAN ARNOLD,
United States Circuit Judge.
JENNINGS BAILEY,
United States District Judge.
F. DICKINSON LETTS.
United States District Judge.

1931 [Citation in usual form, filed Sept. 25, 1944, omitted in printing.]

1933–1972 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Civil Action 23420, 23421, 23422, 23423

Assignment of Errors

Filed September 25, 1944

1973 Come now the United States and the Interstate Commerce Commission, defendants in the above-entitled causes, and file the following assignment of errors upon which they will rely in the prosecution of their appeal from the final decree of the District Court entered September 20, 1944. The District Court erred:

1. In entering the decree enjoining and setting aside the order of the Interstate Commerce Commission of June 12, 1944.

2. In holding that the Commission was without jurisdiction to make and issue the order of June 12, 1944.

3. In holding with respect to the rehearing before the Commission as follows: That "As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This Court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further."

4. In holding that the Capital Transit Company is lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route or routes involved in accordance with the laws of each state having jurisdiction, and in basing upon that holding its holding that the Commission was without jurisdiction over the operations of the said company involved in its order.

1974 5. In holding that the Alexandria, Barcroft and Washington Transit Company is lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route or routes involved in accordance with the laws of each state having jurisdiction, and in basing upon that holding its holding that the Commission was without jurisdiction over the operations of the said company involved in its order.

6. In holding that the Arlington and Fairfax Motor Transportation Company is lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route

or routes involved in accordance with the laws of each state having jurisdiction, and in basing upon that holding its holding that the Commission was without jurisdiction over the operations of the said company involved in its order.

7. In holding that the Washington, Virginia & Maryland Coach Company is lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route or routes involved in accordance with the laws of each state having jurisdiction, and is basing upon that holding its holding that the Commission was without jurisdiction over the operations of the said company involved in its order.

8. In substituting its judgment for that of the Commission in setting aside the Commission's finding as to the nature of the operations.

9. In holding that the facts found by the Commission do not support its conclusion that its taking of jurisdiction is necessary to carry out the national transportation policy.

1975 10. In holding that the Commission's findings in support of its conclusion that its taking of jurisdiction is necessary to carry out the national transportation policy are not supported by substantial evidence.

11. In holding that the dissatisfaction of employees with the fares charged by the carriers is not ground in support of the findings that their reduction is necessary to carry out the national transportation policy.

12. In failing to give consideration to the evidence and findings of the Commission other than the evidence and findings relating to the dissatisfaction of employees with the fares charged by the carriers.

13. In holding that "As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the *the* war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers."

14. In substituting its judgment for that of the Commission on the question of whether the application of the Act to the transportation involved is necessary to carry out the national transportation policy, a question the determination of which is expressly committed to the Commission.

15. In enjoining the Commission's order in its application to the operations of the Capital Transit Company.

EXHIBIT 2

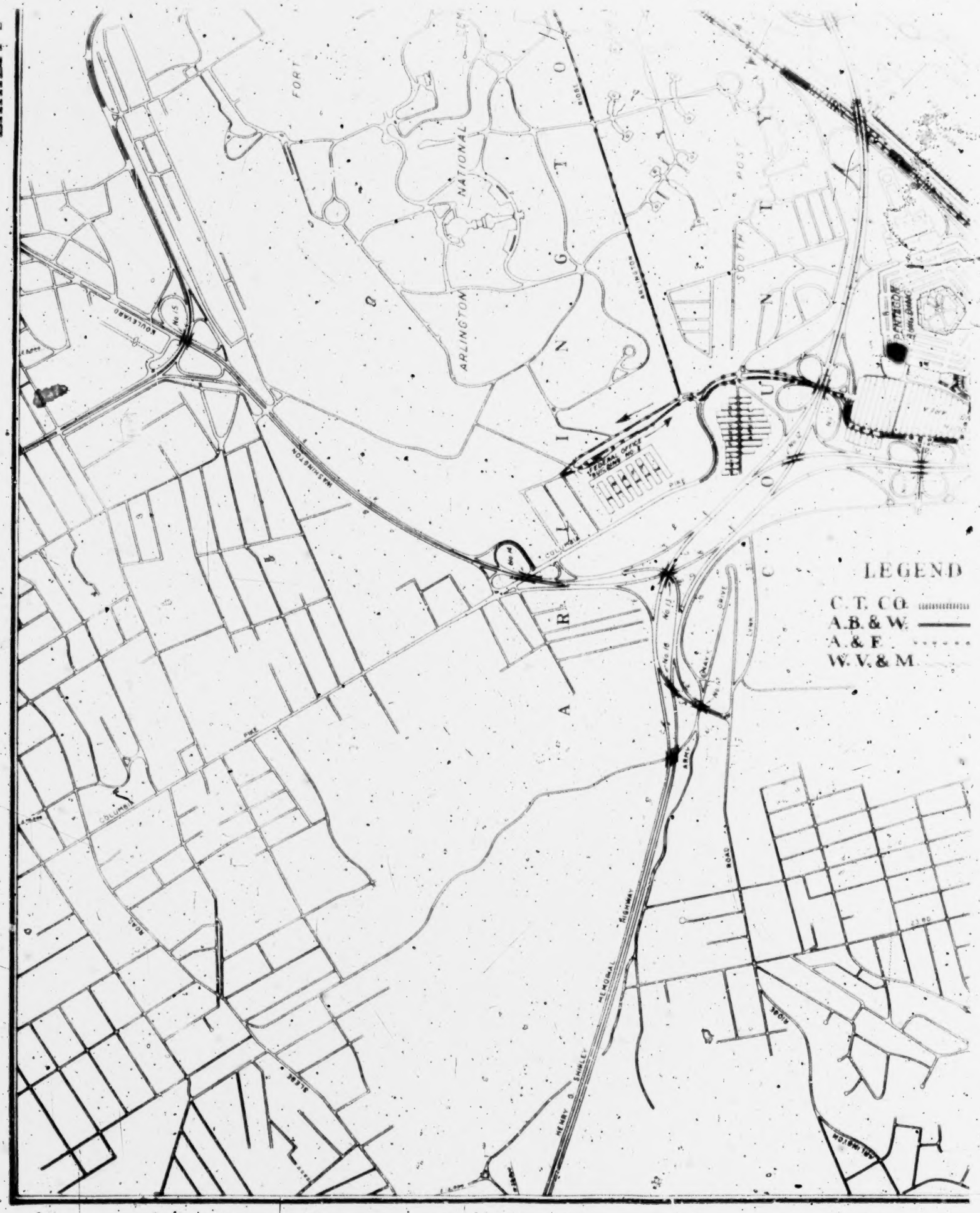

LEGEND
C. T. CO.
A.B.& W.
A.& F.
W.V.& M.
FORT
ARLINGTON
NATIONAL
CEMETERY
SOUTH POST
ROSSLYN
COLUMBIA PIKE
WASHINGTON BLVD.
HENRY G. SHIRLEY MEMORIAL HIGHWAY
ARMY NAVY DRIVE
HOSPITAL
ARMY-NAVY DRIVE
MEMORIAL BRIDGE
LONG BRIDGE
ARLINGTON MEMORIAL AVE.
MEMORIAL AVE.
MEMORIAL AVE. BRIDGE
14TH ST. BRIDGE
HELIPORT
PENTAGON
PENTAGON MOTOR POOL
PENTAGON PARKING
PARKING AREA
HELIPORT
HELIPORT
HELIPORT

EXHIBIT 2



U. S. GOVERNMENT PRINTING OFFICE 1943 O 529604

1976 16. In enjoining the Commission's order in its application to the operations of the Alexandria, Barcroft and Washington Transit Company.

17. In enjoining the Commission's order in its application to the operations of the Arlington And Fairfax Motor Transportation Company.

18. In enjoining the Commission's order in its application to the operations of the Washington, Virginia & Maryland Coach Company.

19. In enjoining the Commission's order in response to the representations and allegations of the State Corporation Commission of the State of Virginia.

20. In enjoining the Commission's order in any of its application or operation whatsoever.

21. In failing to hold that the Commission's said order, fixing and prescribing fares for the transportation involved, was in all respects within the Commission's statutory authority.

22. In failing to hold that the said order was supported by adequate findings and substantial evidence, and was in all respects a valid order.

23. In failing to dismiss on the merits the complaint or motion of the plaintiffs praying that the said order be enjoined and set aside.

Wherefore, Defendants pray that said decree be reversed.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

1977 Per R. C. P. WENDELL BERGE,
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

1995 [Clerk's certificate to foregoing transcript omitted in printing.]

1997 *Exhibit 4*

BUREAU OF MOTOR CARRIERS

WASHINGTON MAY 3, 1943.

Memorandum to Commissioner AITCHISON:

Re: Bus fares in Washington area

This refers to the letter to Chairman Alldredge signed by Secretary of War Stimson, dated April 27, 1943, in which he brings to the attention of the Commission the allegedly excessive and inequitable rates charged for transportation of passengers between Washington and the government buildings across the Potomac River. The reason for submitting the matter to the Commission is the belief of Secretary Stimson that the bus companies have not cooperated in the attempt to obtain an adjustment by voluntary action.

The writer of the letter was evidently not acquainted with the latest developments in this matter. The Washington Regional Committee of Defense Transportation Administrators (Lovejoy, Van Duzer, and Diehl) proposed a plan for uniform joint fares between Capital Transit Co. and the Virginia bus companies and the elimination of preferential local fares, together with some readjustment of the routes of the Virginia companies. The primary purpose of the plan was the greatest possible reduction in empty movement of buses of all companies during rush hours. An incidental result would be reductions and in-
1998 creases of fares as affecting individual riders, with an over-all reduction of about $200,000 per year on the basis of the present number of passengers.

This plan was accepted by the companies several weeks ago, on condition that OPA would not protest the changes. Capital Transit Co. will bear the greatest part of the reduction. The plan, after acceptance, was approved by Senators McCarran and Burton of the Senate District Committee, who had participated in some of the conferences. Last Saturday, May 1, 1943, a conference between the Regional Committee and representatives of OPA was held, at which there was present Senator Burton, an army officer representing Secretary Stimson, and myself. The OPA officials desired to examine the figures on which the estimate of savings was made. They expect to give their opinion within a few days. If it is favorable, tariffs reflecting the agreement will be filed shortly thereafter.

Your file, including the letter from Secretary Stimson, is returned herewith.

Att. BLANNING.

1999 *Exhibit 11*

APRIL 27, 1943.

Honorable J. HADEN ALLDREDGE,
Chairman, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: For many months the War Department has been seeking to obtain a reduction in the rates of fare between the District of Columbia and the Pentagon Building, the Army Air Forces Building at Gravelly Point and the Navy Annex. For months the Commanding General of the Washington Military District, in cooperation with the Navy Department, has sought in vain to have the transportation companies agree to a voluntary reduction in rates.

The present rates are excessive, as the report of Mr. W. Y. Blanning of your Commission shows. They place an unfair financial burden on employees, most of whom work at modest salaries. Glaring inequities permeate the entire rate structure. The fares range from 5 cents to 10 cents for one-way transportation from the District to the buildings named. You appreciate, of course, that most passengers must also pay an additional fare to the Capital Transit Company in order to reach the terminals of the buses running to the three buildings in Virginia. As a result, on some lines the fare one-way is as much as 20 cents. The companies have enjoyed a tremendous increase in net profits.

The War Department had great hopes that the study undertaken by Mr. Blanning would lead to a speedy correction of the rate structure. It was February 16, 1943, that Blanning submitted his report to Mr. F. W. Lovejoy, Executive Secretary, Washington Regional Committee of Defense Transportation Administrators. Mr. Lovejoy then had conferences with the companies. Indeed, there has been an abundance of conferences. But after the lapse of nine weeks, no reductions have been granted to the employees of the War Department. The transportation companies have shown little disposition to cooperate although the War Department has made or obtained many concessions to enable the companies to render adequate service. I have now arrived at the point, where I feel that further attempts to work out fair rates on a voluntary basis would be wasteful. Because of this and because of the War Department's vital interest in having adequate transportation facilities for its many workers and in preventing them from paying exorbitant rates, I bring this matter to the attention of the Interstate Commerce Commission.

Very sincerely,

HENRY L. STIMSON,
Secretary of War.

2000 *Exhibit 12*

War Department, Military District of Washington

Table I.—*Comparative transit distances for present rates of fare between selected locations in the District of Columbia and adjacent Virginia*

From—	Transit mileage to—							
	For District fare					For District fare plus trans-Potomac fare		
	Tempo. X, Y, and Armory	Munitions	A, B, and C	Navy Yard	Bolling Field	The Pentagon	Gravelly Pt. (T-7)	Navy Annex
D. C. Line and Conduit Rd.	10.0	6.2	9.4	9.5	13.6	[1] 8.2	10.5	[1] 8.7
D. C. Line and Mass. Ave.	9.9	7.2	9.3	9.4	13.5	[1] 8.0	11.4	[1] 8.5
D. C. Line and Wisc. Ave.	10.0	6.2	9.4	9.5	13.6	[1] 8.1	10.5	[1] 8.6
Chevy Chase Circle	9.8	7.1	9.2	9.3	13.4	[1] 8.6	11.3	[1] 9.1
D. C. Line and 16th St.	11.0	8.2	10.3	10.5	14.5	11.6	12.0	12.8
D. C. Line and Ga. Ave.	8.4	7.8	9.0	8.7	12.7	10.2	10.6	11.4
D. C. Line and R. I. Ave.	6.2	6.3	7.4	6.0	10.1	8.6	9.0	9.8
D. C. Line and Kenilworth Ave.	6.0	7.5	8.4	5.8	8.6	9.7	10.1	10.9
Georgetown (Wisc. and M St. NW)	5.5	1.8	4.9	5.0	9.1	[1] 3.7	6.0	[1] 4.2
Tenley Circle (Wisc. and Neb.)	8.8	5.0	8.2	8.3	12.4	[1] 6.9	9.3	[1] 7.4
Dupont Circle	5.3	2.6	4.7	4.8	8.9	6.0	6.8	7.2
Conn. Ave. and Calvert	6.3	3.6	5.7	5.8	9.9	7.0	7.8	8.2
16th St. and Columbia Rd.	6.2	3.4	5.5	5.7	9.7	6.8	7.2	8.0
12th and F (approx. center of business district)	.6	1.3	3.0	3.1	7.2	3.7	4.0	4.9
Wisc. and Mass. Ave.	8.5	3.7	6.9	7.0	11.1	7.1	8.0	8.3
Washington Circle	4.9	1.1	4.3	4.4	8.5	4.5	5.4	5.7
Logan Circle	2.2	2.3	3.4	2.0	6.1	4.6	5.0	5.8
Grant Circle	5.6	5.0	6.2	5.9	9.9	7.4	7.8	8.6
Barney Circle	1.0	3.9	2.5	0.8	4.3	6.2	6.7	6.5
Union Station	1.5	2.5	2.3	2.6	6.0	4.2	4.8	5.6
New York and Bladensburg Road	2.4	5.4	4.9	3.5	7.6	7.6	8.0	8.5
Cap. Transit 19th and D NW via Memorial Bridge						3.5		
Capital Transit 7th and Const. NW via 14th Street Bridge						3.6		
A. B. & W. 12th and Penna. NW via Memorial Bridge						4.6		5.8
A. B. & W. 12th and Penna. NW via 14th Street Bridge						3.6		4.8
A. B. & W. 12th and Penna. NW via Memorial Bridge							5.4	
A. B. & W. 12th and Penna. NW via 14th Bridge							3.9	
A. & F. 12th and Penna. NW via Memorial Bridge						5.2		6.4
A. & F. 12th and Penna. NW via 14th Street Bridge						3.4		4.6
A. & F. Rosslyn Circle [2]						3.0		3.5
W. V. and M. 11th and Penna. NW via Memorial Bridge						5.0		
W. V. and M. 11th and Penna. NW via 14th Street Bridge						3.8		

[1] Via Rosslyn.
[2] Rosslyn shuttle fare only.

16 August 1943.

2001 *Exhibit 13*

WAR DEPARTMENT, MILITARY DISTRICT OF WASHINGTON

TABLE II.—*Computation of average one-way mass transit travel distances between home and office of Pentagon and Gravelly Point (T–7) employees*

Transit travel	Terminal line	No. of passengers [1]	Passenger miles [2]	
			Total	Average
1. Within D. C. and between D. C. and The Pentagon.	C. T. Co. R-2	5,444	33,326.8	6.12
	C. T. Co. Q-2	1,794	11,692.6	6.52
	A. B. & W	1,557	9,325.2	5.99
	A. & F	284	1,759.8	6.20
	Rosslyn shuttle	22	138.8	6.31
Total		9,101	56,243.2	6.18
2. Within D. C. and between D. C. and Gravelly Point (T-7).	A. B. & W	400	2,766.7	6.92
3. Total		9,501	59,009.9	6.21

[1] Number of passengers based on "nearest street intersection" questionnaire replies.
[2] Distances to buildings based on special field analysis of normal distances along transit routes; includes all travel performed in D. C. and between D. C. and The Pentagon and Bldg. T-7 but does not include travel performed in Maryland.

14 August 1943.

2002 *Exhibit 14*

WAR DEPARTMENT, MILITARY DISTRICT OF WASHINGTON

TABLE III.—*Number of employees in The Pentagon and Gravelly Point (T–7) for months of May and July 1943*

	May	July
The Pentagon:		
Civilian and Military	29,785	28,519
Public Buildings Administration	1,200	1,250
Welfare and Recreational Association	1,147	1,224
Total	32,132	30,993
Gravelly Point (T-7):		
Civilian and Military	3,660	3,076
Public Buildings Administration	179	179
Welfare and Recreational Association	112	115
Total	3,951	3,370

16 August 1943.

2003 *Exhibit 15*

WAR DEPARTMENT, MILITARY DISTRICT OF WASHINGTON

TABLE IV.—*Summary of bus passengers carried between District of Columbia and The Pentagon and Gravelly Point (T–7) during the periods 6 August 0700–2400 and 7 August 0001–0600*

Building	Terminal transit line	D. C. and Md. passengers			Virginia passengers			
		From District	To District	Total	From Virginia	To Virginia	Total	Total passengers
The Pentagon	C. T. Co	9,899	8,586	18,485				18,485
	A. B. & W	3,203	3,861	7,064	1,842	2,104	3,946	11,010
	A. & F	770	1,562	2,332	771	888	1,559	3,891
	Rosslyn shuttle [1]	324	314	638	391	379	770	1,408
	W. V. & M	3	394	397				397
Total		14,199	14,717	28,916	2,904	3,371	6,275	35,191
Gravelly Point	A. B. & W	1,443	1,143	2,586	88	90	178	2,764
The Pentagon and Gravelly Point, total		15,642	15,860	31,502	2,992	3,461	6,453	37,955

[1] Rosslyn shuttle total distributed to D. C. and Va. on basis of questionnaire ratio $\frac{326}{598}$ = 54.6% to Va.

Exhibit 16a

War Department, Military District of Washington

TABLE V.—*Number of A. B. & W. and A. & F. bus passengers arriving, getting off, getting on, and leaving The Pentagon during rush hours as of May 1943*

15 minute period beginning	A. B. & W.										A. & F.														
	District to Virginia					Virginia to District					District to Virginia					Virginia to District					Rosslyn shuttle at Pentagon				
	Number of buses	Arrive	Off	On	Leave	Number of buses	Arrive	Off	On	Leave	Number of buses	Arrive	Off	On	Leave	Number of buses	Arrive	Off	On	Leave	Number of buses	Arrive	Off	On	Leave
0630	3	115	32	0	83	5	77	19	3	61	2	60	33	3	30	2	32	6	0	26	0	0	0	0	0
0645	4	170	72	1	99	4	77	16	2	33	1	22	11	0	11	3	20	4	0	16	1	23	13	0	10
0700	8	256	108	6	154	6	148	41	22	129	2	63	26	7	44	1	31	9	0	22	2	44	20	1	25
0715	4	129	88	4	45	6	227	65	9	171	1	37	32	1	6	2	56	26	2	32	1	40	21	3	22
0730	4	137	93	8	52	3	108	12	5	101	2	63	47	3	19	6	122	4	6	34	3	102	49	2	55
0745	7	168	118	18	68	8	473	125	16	364	2	46	26	4	24	0	0	0	0	0	3	104	70	3	37
0800	5	155	123	1	33	9	362	103	36	295	2	47	34	8	21	6	176	66	4	114	2	77	73	2	6
0815	6	195	154	14	55	8	445	222	38	261	3	90	81	3	12	3	165	60	5	101	3	105	63	0	42
0830	4	78	51	7	34	5	276	123	11	164	3	163	53	3	13	5	178	61	19	136	3	133	131	3	5
0845	5	175	146	6	35	5	245	90	26	172	3	90	74	0	16	4	115	66	2	51	1	40	40	0	0
0900	6	135	107	1	29	5	203	79	15	140	6	62	52	2	12	1	39	16	1	24	2	80	78	0	2
0915	4	60	55	5	19	4	155	30	10	135	3	35	25	1	12	1	17	3	1	15	0	0	0	0	0
0930	5	144	115	8	37	6	95	22	22	95	2	21	11	6	16	2	31	6	4	29	1	24	24	5	5
0945	4	102	82	2	22	2	25	7	3	21	2	8	1	2	9	1	14	4	0	10	0	0	0	0	0
1000	5	120	83	1	38	4	124	28	33	129	1	18	6	0	12	2	15	3	3	15	1	14	14	4	4
1015	3	98	50	3	51	4	83	12	11	82	1	7	5	2	4	2	18	5	1	14	0	0	0	0	0
Subtotal	77	2,246	1,477	85	854	84	3,123	1,003	263	2,383	36	733	517	45	261	41	1,929	388	48	689	23	786	596	23	213
1530	1	45	12	13	46	1	9	2	3	10	2	44	6	2	40	2	25	7	43	61	1	0	0	28	28
1545	4	159	74	36	121	2	11	0	49	60	2	62	4	12	70	1	11	3	4	12	0	0	0	0	0
1600	5	134	39	60	155	2	0	0	40	40	1	41	7	20	54	5	18	3	204	219	3	10	10	44	44
1615	4	151	46	23	128	1	37	4	5	38	1	28	5	17	40	3	48	10	65	103	0	0	0	0	0
1630	5	167	35	56	188	2	73	23	16	66	2	69	4	37	102	3	24	24	66	66	2	27	25	48	50
1645	6	125	12	51	164	3	91	13	37	115	1	25	0	12	37	2	0	0	69	69	1	0	0	29	29

1700	3	92	9	76	149	3	51	5	65	111	2	98	0	64	162	5	33	8	113	138	3	24	17	72	79
1715	7	145	4	239	380	1	10	2	7	15	3	140	1	91	230	4	27	2	134	159	3	0	0	99	99
1730	6	96	0	193	289	2	39	3	41	77	6	231	0	148	379	3	14	0	126	140	3	0	0	107	107
1745	6	153	3	166	316	6	61	6	189	244	2	122	0	50	172	2	17	2	81	98	3	0	0	114	114
1800	8	235	7	109	337	5	22	0	108	130	3	151	0	85	236	4	25	0	62	87	2	0	0	58	58
1815	6	201	1	76	276	5	67	3	116	180	2	34	0	13	47	2	30	0	9	39	1	0	0	33	33
1830	1	0	0	4	4	2	12	0	55	67	0	0	0	0	0	0	0	0	0	0	1	0	0	21	21
Subtotal	62	1,703	242	2,092	2,553	35	483	61	731	1,153	27	1,045	27	551	1,569	36	278	59	976	1,189	23	61	52	653	662
Total	139	3,949	1,719	1,177	3,407	119	3,606	1,064	994	3,536	63	1,778	544	596	1,830	77	1,301	447	1,024	1,878	46	847	648	676	875

16 August 1943.

2005 *Exhibit 17*

War Department, Military District of Washington

TABLE VI.—*Analysis of Capital Transit Co. pass use* [1]

Building and line	Passengers				Pass use				Value of ride
	Total number	No reply	No pass	Pass users	Total non work	Average			
						Non-work	Work only	Total use	
1. The Pentagon:									
C. T. Co. R-2	5,823	412	1,659	3,752	16,040	4.275	12	4.275	.0768
C. T. Co. Q-2	2,284	180	401	1,703	8,629	5.067	12	17.867	.0732
(R-2 plus Q-2)	(8,107)	(592)	(2,068)	(5,455)	(24,669)	(4.522)	(12)	(16.522)	(.0736)
A. B. & W.[2]	1,725	171	612	942	4,359	4.627	12	16.627	.0732
A. & F.[2]	261	15	105	141	605	4.291	12	16.291	.0707
Rosslyn Shuttle[2]	271	25	128	118	672	5.695	12	17.695	.0703
W. Va. & Md.[2]	22	2	10	10	28	2.800	12	14.800	.0845
Total	10,386	805	2,915	6,666	30,333	4.550	12	16.550	.0758
2. Gravelly Point:									
A. B. & W	560	65	179	316	1,657	5.244	12	17.244	.0725
3. Pentagon-Gravelly Point	10,946	870	3,094	6,982	31,990	4.582	12	16.582	.0754

[1] Based on returns from questionnaires distributed to Pentagon and Tempo T-7 (Gravelly Point) personnel during May 1943 and pass value of $1.25.

[2] Figures shown opposite Va. transit companies are for Capital Transit Co. pass users who pay additional fare on Va. companies' facilities.

Exhibit 18

WAR DEPARTMENT, MILITARY DISTRICT OF WASHINGTON

TABLE VII.—*Analysis of one-way trans-Potomac fares paid by Pentagon and Gravelly Point employees*[1]

Terminal transit company	Pass plus 5¢		Pass plus 10¢		Pass plus ticket		Token plus 5¢		Token plus 10¢		Token plus ticket		10¢ plus 5¢		10¢ plus ticket		10¢ plus 10¢		5¢ only		10¢ only		Ticket only		Total	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
1. C. T. Co	5,355	66.5					1,275	15.8					509	6.3					914	11.4					8,053	100.0
2. A. B. & W.:																										
Pentagon			976	58.2					216	12.9							346	20.6			139	8.3			1,677	100.0
Grav. Pt. (T-7)			117	21.2	228	41.3			31	5.6	61	11.1			35	6.4	39	7.1			24	4.4	16	2.9	551	100.0
3. A. & F.:																										
12th and Penn. Ave			138	52.7					38	14.5							28	10.7			58	22.1			262	100.0
Rosslyn shuttle[2]	128	47.8					75	28.0									48	17.9	17	6.3					268	100.0
4. W. Va. & Md			7	33.3					6	28.6							3	14.3			5	23.8			21	100.0
5. Total	5,483	50.5	1,238	11.4	228	2.1	1,350	12.5	291	2.7	61	.6	509	4.7	35	.3	464	4.3	931	8.6	235	2.1	16	.2	10,832	100.0

[1] Based on questionnaires.
[2] Exclusive of Virginia residents.

9 August 1943.

2007 *Exhib*

WAR DEPARTMENT, MILITARY

TABLE VIII.—*Analysis of passengers carried and daily fares. August*

Terminal transit company	Rate of fare within D. C.									
	10¢		8½¢		Pass			Total		
	No.	Cost	No.	Cost	No.	Rate	Cost	No.	Cost	Rate
1. The Pentagon:										
a. Capital Transit Co	1,168	$116.80	2,926	$243.73	12,293	$0.0756	$929.35	16,387	$1,289.88	$0.0787
b. A. B. & W. Transit Co	1,457	145.70	910	75.80	4,111	.0752	309.15	6,478	530.65	.0819
c. A. & F. Transit Co	250	25.00	338	28.16	1,228	.0767	94.19	1,816	147.35	.0811
d. Rosslyn Shuttle	114	11.40	179	14.91	305	.0707	21.56	398	47.87	.0801
e. W. V. & M. Coach Co	57	5.70	113	9.41	132	.0845	11.15	302	26.26	.0870
f. Total Pentagon	3,046	304.60	4,466	372.01	18,069	.0756	1,365.40	25,581	2,042.01	.0798
g. Percent of District passengers	11.92		17.45		70.63			100.0		
h. Percent of total passengers	10.53		15.44		62.49			88.46		
2. Gravelly Point (T-7):										
a. A. B. & W. Transit Co	347	$34.70	432	$35.99	1,619	.0725	$117.38	2,398	$188.07	.0784
b. Percent of District passengers	14.47		18.02		67.51			100.0		
c. Percent of total passengers	13.42		16.70		62.61			92.73		
3. Pentagon-Grav. Pt. (T-7):										
a. Totals	3,393	$339.30	4,898	$408.00	19,688	.0753	$1,482.78	27,979	$2,230.08	.0797
b. Percent of District passengers	12.13		17.51		70.36			100.0		
c. Percent of total passengers	10.77		15.54		62.50			88.81		

1 Based on fare distribution obtained from questionnaires and traffic count taken during the periods 6 August 0600-2400 and 7 August 0001-0600.

10 August 1943.

it 19

DISTRICT OF WASHINGTON

aid by Pentagon and Gravelly Point, T–7, employees, as of 1943

Rate of fare across Potomac only									Total trip	
10¢		7½¢		5¢		Total				
No.	Cost	No.	Cost	No.	Cost	No.	Cost	Rate	No.	Cost
				18,485	$924.25	18,485	$924.25	$0.05	18,485	$2,214.13
7,064	$706.40					7,064	706.40	.10	7,064	1,237.05
2,332	233.20					2,332	233.20	.10	2,332	380.55
				638	31.90	638	31.90	.05	638	79.77
397	39.70					397	39.70	.10	397	65.96
9,793	979.30			19,123	956.15	28,916	1,935.45	.0669	28,916	3,977.46
33.87				66.13		100.0			100.0	
991	$99.10	1,595	$119.63			2,586	$218.73	.0846	2,586	406.80
38.32		61.68				100.0			100.0	
10,784	$1,078.40	1,595	$119.63	19,123	$956.15	31,502	$2,154.18	.0684	31,502	4,384.25
34.23		5.06		60.71		100.0			100.0	

10 August 1943.

Exhibit 20

War Department, Military District of Washington

TABLE IX.—*Comparison of probable effect of various fare plans between Washington and The Pentagon and Gravelly Point (T-7) on gross revenues derived from operations concerned*[1]

Transit company	Present annual revenue	13½¢ ticket			5¢ trans-Potomac only			10¢ joint fare			Token or 10¢			District fare		
		Probable revenue	Annual reduction		Probable revenue	Annual reduction		Probable revenue	Annual reduction		Probable revenue	Annual reduction		Probable revenue	Annual reduction	
			Amount	Percent		Amount	Percent		Amount	Percent		Amount	Percent		Amount	Percent
1. C. T. Co.	$984,151	$934,150	$49,736	5.03	$984,151			$757,567	$226,584	23.02	674,591	$309,560	31.47	600,513	$383,638	38.98
2. A. B. & W.																
The Pentagon	220,397	153,024	67,373	30.57	110,198	$110,199	50.00	119,340	101,057	45.85	111,680	108,717	49.33	97,722	122,675	55.66
Gravelly Pt. (T-7)	68,243	55,158	13,086	19.18	40,342	27,902	40.85	43,274	24,970	36.59	30,262	28,982	42.47	33,927	34,317	50.29
Total A. B. & W.	288,641	208,182	80,459	27.88	150,540	138,101	47.85	162,614	126,027	43.66	150,942	137,699	47.71	131,649	156,992	54.39
3. A. & F.																
12th and Pa.	72,758	53,873	18,885	25.96	36,379	36,379	50.00	44,429	28,329	38.94	40,154	32,594	44.78	36,033	36,725	50.48
Rosslyn shuttle	9,953	9,953			9,953			16,577	(+)624	(+)6.27	9,510	443	4.45	8,471	1,482	14.89
Total A. & F.	82,711	63,826	18,885	22.83	46,332	36,379	43.98	55,006	27,705	33.50	49,674	33,037	39.94	44,504	38,207	46.19
4. W. V. & M.	12,386	9,245	3,141	25.36	6,193	6,193	50.00	7,675	4,711	38.03	6,823	5,563	44.91	6,680	5,706	46.07
5. Totals	1,367,889	1,215,668	152,221	11.13	1,187,216	180,673	13.21	982,862	385,027	28.15	882,430	455,859	35.52	783,346	584,943	42.73
6. Per person	86.84	77.18	9.66	11.13	75.31	11.47	13.21	62.40	24.44	28.15	56.00	30.84	35.52	49.73	37.11	42.73

[1] Division of through fares assumed to be equal between the Capital Transit Co. and the Virginia companies for all passengers who use combined facilities of the companies, except that for "5¢ trans-Potomac only" the fares collected by each company would be retained by the company concerned. Where facilities of only one company are used, that company is credited with the full fare.

[2] Does not include revenue derived from travel within Maryland.

16 August 1943.

2009

Exhibit 21

War Department

TABLE X.—*Percentage distribution of departmental employees by service and grade*

Service and grade	Percentage	Base salary	Service and grade	Percentage	Base salary
CAF-1	1.07	$1,260	SP-1	.00	1,200
CAF-2	48.18	1,440	SP-2	.02	1,320
CAF-3	21.16	1,620	SP-3	.07	1,440
CAF-4	7.87	1,800	SP-4	.30	1,620
CAF-5	3.40	2,000	SP-5	.38	1,800
CAF-6	1.36	2,300	SP-6	.32	2,000
CAF-7	1.53	2,600	SP-7	.23	2,300
CAF-8	.33	2,900	SP-8	.14	2,600
CAF-9	.95	3,200			
CAF-10	.13	3,500	Total SP	1.46	
CAF-11	.49	3,800			
CAF-12	.43	4,600	CPC-1		720
CAF-13	.23	5,600	CPC-2	1.48	1,200
CAF-14	.08	6,500	CPC-3	3.64	1,320
CAF-15	.06	8,000	CPC-4	.18	1,500
CAF-16			CPC-5	.69	1,680
			CPC-6	.22	1,860
Total CAF	87.27		CPC-7	.04	2,040
			CPC-8	.03	2,200
P-1	.48	2,000	CPC-9	.01	2,300
P-2	1.26	2,600	CPC-10	.01	2,600
P-3	1.35	3,200			
P-4	.96	3,800	Total CPC	6.30	
P-5	.49	4,600			
P-6	.31	5,600			
P-7	.09	6,500			
P-8	.03	8,000			
Total P	4.97				

NOTE.—Percentage computed on the basis of October 31, 1942 figures.

Prepared by: Research and Policy Branch, C. P. D., O. S. W., July 29, 1943.

2010

Exhibit 22

WAR DEPARTMENT

TABLE XI.—*Average net amount of pay checks*[1] *at various salary levels*

[Based on sample of 184 cases]

Salary per annum	Size of sample	Gross earnings	Deductions				Net amount paid
			Withholding tax	5% retirement	War bonds	Total	
$1,200	2	$92.50	$8.80	$2.50	$1.88	$13.18	$49.33
$1,260	2	65.00	5.05	2.63	3.75	11.43	53.57
$1,320	37	67.50	6.27	2.68	1.86	10.81	56.69
$1,440	60	73.00	8.60	2.95	5.23	16.78	56.22
$1,620	40	82.12	12.15	3.38	4.38	19.91	61.97
$1,800	13	91.25	11.47	3.75	5.17	20.33	70.92
$2,000	6	101.38	15.93	4.17	5.00	25.10	76.28
$2,100	1	106.45	16.80	4.38		21.18	85.27
$2,300	3	116.59	14.20	4.80	3.75	22.75	93.84
$2,600	5	131.80	17.15	5.42	8.50	31.08	100.72
$2,900	1	147.01	14.40	6.05	15.00	35.45	111.56
$3,200	6	159.51	18.73	6.67	7.08	32.49	127.02
$3,300	1	163.68	25.80	6.88		35.68	128.00
$3,800	2	184.51	27.69	7.92	1.88	37.40	147.12
$4,600	3	217.84	35.07	9.59	12.50	57.16	160.68

[1] For normal 15-day period plus overtime.

NOTE.—The War Bond deductions shown in this table (based on the first half of July) constitute 5.2% of the total pay roll. The most recent available figures for the War Department in the Metropolitan District of Columbia are for the month ending June 30. They show that War Bond deductions averaged 5% of the total pay roll. This would seem to indicate that the sample group on which this table is based is fairly typical of the total group of which it is a part.

Prepared by Research & Policy Branch, CPD—OSW, August 17, 1943.

2011

Exhibit 23

WAR DEPARTMENT

TABLE XII.—*Relationship between location of work and separations rate among civilian personnel, May 1943, departmental service*

Group A, Gravelly Point	Group B, The Pentagon[1]	Group C, accessible locations in District of Columbia
Army Air Forces (in part).	Office, Secretary of War.	Inspector General.
Chemical Warfare Service.	Office, Chief of Staff.	Army Service Forces:
	Army Air Forces (in part).	Adjutant General's Office.
	Army Service Forces:	Chaplains.
	Headquarters.	Judge Advocate General's Office.
	Adjutant General's Office.	Officer Procurement Service.
	Women's Army Corps.	Provost Marshal General.
	Ordnance.	Engineers.
	Signal.	Surgeon General.
	Transportation.	
Average Separations Rate=6.75%.	Average Separations Rate=4.94%.	Average Separations Rate=3.26%.

Average Separations Rate for Groups A and B Combined (Nearby Virginia)=4.70%.

COMPARISONS

Rate for Gravelly Point is 107.1% greater than rate for Accessible District of Columbia.
Rate for the Pentagon is 36.8% greater than rate for Accessible District for Columbia.
Rate for Nearvy Virginia is 44.2% greater than rate for Accessible District of Columbia.

[1] The total number of civilian personnel of The Adjutant General's Office is almost equally divided between Group B and Group C. Inasmuch as a single separations report is made for the entire organization, it has been deemed advisable to exclude A. G. O. from calculations of separations rates in this study.

Prepared by Research & Policy Branch, CPD-OSW, August 17, 1943.

2012 *Exhibit 24*

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY I.—***Summary of bus passengers (one-way rides) carried between the District of Columbia (including Rosslyn and Arlington Farms) and the Navy Annex*** [1]

[Three-day average August 3, 6, 7, 1943, 24-hour period]

Company	District to Annex	Annex to District	Total
Arlington, Barcroft & Washington Transit Company (A. B. & W.):			
12th and Penn. Service	1,421	1,711	2,832
Lincoln Memorial Service	584	420	1,004
Total	1,705	2,131	3,836
Arlington & Fairfax Motor Transportation Company (A. & F.):			
12th and Penn. Service	462	657	1,119
Rosslyn Service	135	182	317
Arlington Farms Service	286		286
Total	883	839	1,722
Both Companies	2,588	2,970	5,558

[1] Based on actual count of passengers on or off busses at the Annex Building.

2013 *Exhibit 25*

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY III.—***Distribution of passengers according to fare combination used***

[One-way rides]

	Pass plus 5¢ 12.55¢	Pass plus 10¢ 17.55¢ [1]	Token plus 5¢ 13.33¢	Token plus 10¢ 18.33¢	10¢ & 5¢ 15¢	10¢ & 10¢ 20¢	5¢ only 5¢	10¢ only 10¢	Total
Distribution from questionnaires [2]	817	1,153	198	194	35	366	234	301	3,298
Percentage	24.7	35.0	5.9	5.9	1.1	11.1	7.1	9.1	100
Calculated distribution:									
A. B. & W. [3]	1,002	1,415	243	238	43	449	77	369	3,836
A. & F. [4]	375	528	91	89	16	168	[5] 317	138	1,722
Total [6]	1,277	1,943	334	327	59	617	394	507	5,558
Percentage	24.7	35.0	6.0	5.9	1.1	11.1	7.1	9.1	100

[1] Value of pass ride estimated at 7.55 based on War Dept. Chart II figure.
[2] Based on answers to questionnaires received from 3,298 one-way rides.
[3] Calculated from Exhibit Navy II which shows A. B. & W. carrying 3,836 out of 5,558 passengers.
[4] Calculated from Exhibit Navy II which shows A. & F. carrying 1,722 out of 5,558 passengers.
[5] Actual average figure for Rosslyn rides shown on Exhibit Navy II.
[6] Based on ratio of 3,298/5,558. See Navy I.

Exhibit 26

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY IV.—*Analysis of passengers carried and one-way fares paid by passengers—24-hour day—Present tariffs*

	Rate of fare within District of Columbia								Rate of fare across Potomac						Daily total	Rate per passenger, one way
	Cash, 0.1000		Token, 0.0833		Pass, 0.0755		Total		0.1000		0.0500		Total			
Capital Transit	[1] 676	$67.60	[2] 661	$55.06	[3] 3,320	$250.66	4,657	$373.32							$373.32	0.0802
A. B. & W									[4] 2,471	$241.10	[5] 1,365	$68.25	3,836	$315.35	315.35	.0822
A. & F									[6] 92	92.30	[7] 799	39.95	1,722	132.25	132.25	.0768
Total	676	67.60	661	55.06	3,320	250.66	4,657	373.32	3,394	339.40	2,164	108.20	5,558	447.60	820.92	.1477
Percent of District passengers		14.48		14.17		71.35		100								
Percent of total passengers		12.16		11.89		59.73		83.79		61.06		38.94		100		
Annual cost in District						$116,475.84			Average daily cost (individual)			90.2954	Annual total (312 days)			
Annual cost on Trans Pot						139,651.20			Average annual cost (individual)			92.17		$256,127.04		
						256,127.04										

[1] From Chart Navy III, 59 plus 617 equals 676.
[2] From Chart Navy III, 334 plus 327 equals 661.
[3] From Chart Navy III, 1,377 plus 1,943 equals 3,320.
[4] From Chart Navy III, 1,415 plus 238 plus 449 plus 369 equals 2,471.
[5] From Chart Navy III, 1,002 plus 243 plus 43 plus 77 equals 1,365.
[6] From Chart Navy III, 528 plus 89 plus 168 plus 138 equals 923.
[7] From Chart Navy III, 375 plus 91 plus 16 plus 317 equals 799.

Exhibit 27

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY V.—*Analysis based on joint proposal of transit companies of 30 July 1943*

Present distribution [1]	Percentage	Estimated distribution of fare groups under proposal						Proposed distribution	
		5¢ only	10¢ only	Pass and 5¢	Token and 5¢	Ticket [2]			
Pass plus 5¢, 1,377 @ .1255	24.7			[3] 1,377				394 @ .0500	$19.70
Pass plus 10¢, 1,943 @ .1755	35.0					1,943		507 @ .1000	$50.70
Token plus 5¢, 334 @ .1333	6.0				334			1,377 @ .1255	$172.81
Token plus 10¢, 327 @ .1833	5.9					327		3,280 @ .1333 [4]	$437.22
10¢ plus 5¢, 59 @ .1500	1.1					59		Daily cost	$680.43
5¢ only, 394 @ .0500	7.1	394						Annual cost	$212,294.16
10¢ only, 507 @ .1000	9.1		507					Average cost per ride [5]	.1224
10¢ plus 10¢, 617 @ .2000	11.1					617		Average cost per year	$76.27
								Saving per fare	.0253
Total		394	507	1,377	334	2,946	5,558		
Percentage		7.1	9.1	24.8	[6] 6.0	[7] 53.0	100		
Passengers (one way) affected	2,946	Individual annual cost present [8]					$92.17	Total annual cost—present tariffs [8]	$256,127.04
Percentage	53.0	Individual annual cost from above					76.38	Total annual cost—from above	212,294.16
Annual saving per passenger	$14.87	Difference					$15.79	Difference	$43,832.88

[1] From Navy Chart I.
[2] From Navy Chart IV.
[3] 12 Trips for $160—13.33¢.
[4] Present Average cost is 14.77—see Navy Chart IV.
[5] 2,946 plus 334 equal 3,280—59%.

Exhibit 28

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY VI.—*Analysis based on proposed tariff of District fare plus 5 cents*

Present distribution	Percentage	Estimated distribution of fare group under proposal					Proposed distribution	
		5¢ only	10¢ only	Pass and 5¢	Token and 5¢	10¢ and 5¢		
Pass plus 5¢, 1,377 @ .1255	24.7			1,377			394 @ .0500	$ 19.70
Pass plus 10¢, 1,943 @ .1755	35.0			1,943			507 @ .1000	$ 50.70
Token plus 5¢, 334 @ .1333	6.0				334		3,320 @ .1255	$416.66
Token plus 10¢, 327 @ .1833	5.9				327		661 @ .1333	$ 98.11
10¢ plus 5¢, 50 @ .1500	1.1					50	676 @ .1500	$101.40
10¢ plus 10¢ 617 @ .2000	11.1					617		$676.57
5¢ only, 394 @ .0500	7.1	394						
10¢ only, 507 @ .1000	9.1		507				Daily cost	676.57
							Annual cost	211,089.84
Total		394	507	3,320	661	676	Average cost per ride [5]	.1217
Percentage		7.1	9.1	59.7	11.9	12.2	Average cost per year (per individual) [6]	75.94
							Saving per fare	.0260
Passenger (one way) affected	[4] 2,887	Individual annual cost present [3]				$92.17	Total annual cost—present tariffs [3]	$256,127.04
Percentage	51.9	Individual annual cost proposed above				75.94	Total annual cost—proposed above	211,089.84
Annual saving per passenger	$15.60	Difference				$16.23		$45,037.20
Cost within district would total $116,475.84 per year. [1]								
Cost on Trans Potomac Companies would be $94,614.00.								

[1] From Navy Chart I.
[2] From Navy Chart IV.
[3] Present average cost is .1477—Chart IV.
[4] 1,943 and 327 and 617=2,887.
[5] 624 rides.

Exhibit 29

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY VII.—*Analysis based on proposed tariff of 10¢ maximum (joint fare)*

Present Distribution [1]	Percentage	Estimated distribution of fare groups under proposal		Proposed distribution	
		5¢ only	10¢ only		
Pass plus 5¢, 1377 @ .1255	24.7		1,377	394 @ .0500	$19.70
Pass plus 10¢, 1943 @ .1755	35.0		1,943	5,164 @ .1000	516.40
					536.10
Token plus 5¢, 334 @ .1333	6.9		334		
Token plus 10¢, 327 @ .1833	5.9		327		
10¢ plus 5¢, 59 @ .1500	1.1		59	Daily cost	$536.10
10¢ plus 10¢, 617 @ .2000	11.1		617	Annual cost	167,263.60
5¢ only, 394 @ .1500	7.1	394		Average cost per ride [3]	.0964
10¢ only, 507 @ .1000	9.1		507	Average cost per year (per individual) [3]	$60.15
				Saving per fare	.0513
Total		394	5,164		
Percentage		7.1%	92.9%		
Passengers (one way) affected	[4] 4,657	Individual annual cost present [5]	$92.17	Total annual cost—present tariff [6]	$256,127.04
Percentage	83.8%	Individual annual cost proposed above	60.15	Total annual cost—proposed above	167,263.60
		Difference	$32.02	Difference	$88,863.44

[1] From Navy Chart I.
[2] From Navy Chart IV.
[3] Present average fare is .1477—Chart IV.
[4] 1,377 and 1,943 and 334 and 327 and 59 and 617 = 4,657.
[5] 624 rides.

Exhibit 30

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY VIII.—*Analysis based on proposed tariff of token or ten cents*

Present distribution [1]	Percentage	Estimated distribution of fares			Proposed distribution		
		5¢ only	10¢ only	Token [6]			
Pass plus 5¢, 1,377 @ .1255	24.7			1,377	394 @ .0500	$19.70	
Pass plus 10¢, 1,943 @ .1755	35.0			1,943	676 @ .1000	67.60	
Token plus 5¢, 334 @ .1333	6.0			334	4,488 @ .0833	373.85	
Token plus 10¢, 327 @ .1833	5.9			327		461.15	
10¢ plus 5¢, 59 @ .1500	1.1		59				
10¢ plus 10¢, 617 @ .2000	11.1		617		Daily cost		$461.15
5¢ only, 394 @ .0500	7.1	394			Annual cost		$143,878.80
10¢ only, 507 @ .1000	9.1			507	Average cost per ride [3]		.0829
					Average cost per year (per individual) [3]		51.77
Total		394	676	4,488	Saving per fare		.0648
Percentage		7.1	12.2	80.7			
Passengers (one way) affected	[4] 5,164	Individual annual cost—present [5]		$92.17	Total annual cost—present tariff [2]		$256,127.04
Percentage	92.9	Individual annual cost—proposed above		51.77	Total annual cost—proposed		143,878.80
Savings per passenger	$21.77	Difference		40.40	Difference		112,248.24

[1] From Navy Chart I.
[2] From Navy Chart II.
[3] Present average cost is 14.77, Chart IV.
[4] 1,377 and 1,943 and 334 and 327 and 507 and 59 and 617=5,164.
[5] 624 rides.
[6] Estimate that all present 10¢ rides and pass users would use tokens.

Exhibit 31

NAVY DEPARTMENT, ARLINGTON ANNEX EMPLOYEES

NAVY IX.—*Analysis based on proposed tariff of present District fare*

Present distribution [1]	Percentage	Estimated distribution of fares. 5¢ only	Pass	Token	10¢	Proposed distribution	
Pass plus 5¢, 1,377 @ .1265	24.7		1,377			3,682 @ .0743	$277.90
Pass plus 10¢, 1,943 @ .1755	35.0		1,943			733 @ .0833	61.05
Token plus 5¢, 334 @ .1333	6.0			534		749 @ .1000	74.90
Token plus 10¢, 327 @ .1833	5.9			327		394 @ .0500	19.70
10¢ plus 5¢, 59 @ .1500	1.1				59		433.64
10¢ plus 10¢, 617 @ .2000	11.1				617	Daily cost	433.64
5¢ only, 394 @ .0500	7.1	394				Annual cost	135,295.68
10¢ only, 507 @ .1000	9.1		[3] 362	[3] 72	[3] 73	Average cost per ride [5]	.0789
Total		394	3,682	733	749	Average cost per year (per individual) [6]	48.67
Percentage		7.1	66.2	13.2	13.5		
One way riders affected	[4] 5,164	Individual annual cost present [2]			$92.17	Total annual cost—present tariff [2]	256,127.04
Percentage	92.9	Individual annual cost proposed			48.67	Total annual cost—proposed above	135,295.68
Savings per passenger	$23.40	Difference			43.50	Difference	120,831.36

[1] From Navy Chart I.
[2] From Navy Chart II.
[3] Present average cost is 14.77, Chart IV.
[4] 1,377 and 1,943 and 334 and 1,327 and 507 and 59 and 617 = 5,164.
[5] 1,624 rides.
[6] Note Navy Chart IV 71.35% passes, 14.17% tokens, 14.48%.

Exhibit 32

NAVY DEPARTMENT, NAVY ANNEX EMPLOYEES

NAVY X.—*Comparison of probable effect of various fare plans between Washington and Arlington Annex*

Transit company	Present annual revenue	13½c ticket			District Fare plus 5c			Ten cents maximum			Token or 10c			District fare		
		Probable revenue	Annual amount	Reduction, percent	Probable revenue	Annual amount	Reduction, percent	Probable revenue	Annual amount	Reduction, percent	Probable revenue	Annual amount	Reduction, percent	Probable revenue	Annual amount	Reduction, percent
1. C. T. Co.	$116,475.84	$102,376.56	$14,099.28	12.1	$116,475.84			$72,649.20	$43,826.64	37.6	$62,281.44	$54,194.40	46.5	$58,225.44	$58,250.40	50.0
2. A. B. & W.	98,389.20	76,765.76	22,643.44	21.9	65,810.48	$32,778.72	33.3	65,604.24	32,784.96	33.3	56,128.80	42,260.40	42.9	52,834.08	43,555.12	46.2
3. A. & F.	41,262.00	21,643.44	8,090.16	19.6	29,003.52	12,258.48	29.7	29,009.76	12,252.24	29.6	25,468.56	15,793.44	38.2	24,236.16	17,025.84	41.3
Total	256,127.04	212,294.16	43,832.88	17.1	211,089.84	45,037.20	17.6	167,263.20	88,863.84	34.6	143,878.80	112,248.24	43.8	135,295.68	120,831.36	
Per person	92.17	76.27	15.90	17.1	75.94	16.23	17.6	60.16	32.01		51.77	40.40		48.67	43.50	

[1] Division of through fares assumed to be equal between the Capital Transit Co. and the Va. companies for all passengers who use combined facilities of the companies, except that for "5c trans-Potomac only" the fares collected by each company would be retained by the company concerned. Where facilities of only one company are used, that company is credited with the full fare.

[2] Does not include revenue derived from travel within Maryland.

2021 *Exhibit 33*

Serial No. _____ May 10, 1943.

MILITARY DISTRICT OF WASHINGTON

OFFICE OF THE ARMY HEADQUARTERS COMMANDANT, WASHINGTON, D. C.

Bus Riders

Your personal welfare demands that you fill out and return the following questionnaire at once to your supervisor. This study is being made by the War and Navy Departments in order to obtain data necessary to protect your interests in matters pertaining to bus fares and service. Please cooperate by furnishing data on your usual trip.

Name _____ Phone Ext. ____ Room ____

(1) The Pentagon ____ (2) Gravelly Pt. ____ (3) Navy Annex ____

Residence _____ (1) _____ (2) _____
(Nearest St. Intersection) Washington Alexandria

(3) _____ (1) D. C. ____ (2) Va. ____ (3) Md. ____
Name of other city

A. In coming to work (morning) what is the last bus line you use in getting to building? (Check one):

a. D. C. & Md. Residents:
(1) C. T. Co. Line R–2 ____
(2) C. T. Co. Line Q–2 ____
(3) A. B. & W. (12th & Pa.) ____
(4) A. & F. (12th & Pa.) ____
(5) Rosslyn Shuttle ____
(6) W. Va. & Md. (Arnold) ____

b. Virginia Residents:
(1) A. B. & W ____
(2) A. & F ____
(3) W. Va. & Md ____
(4) Rosslyn Shuttle ____

B. In going from work (evening) what is the first bus line you ordinarily use from the building? (Check one):

a. D. C. & Md. Residents:
(1) C. T. Co. Line R–2 ____
(2) C. T. Co. Line Q–2 ____
(3) A. B. & W. (12th & Pa.) ____
(4) A. & F. (12th & Pa.) ____
(5) Rosslyn Shuttle ____
(6) W. Va. & Md. (Arnold) ____

b. Virginia Residents:
(1) A. B. & W ____
(2) A. & F ____
(3) W. Va. & Md ____
(4) Rosslyn Shuttle ____

C. Ordinarily, in coming to work, what transportation do you use to get to bus checked in item A? (Check each facility used): (1) C. T. Co. bus ____ (2) C. T. Co. streetcar ____ (3) A. B. & W. bus ____ (4) A. & F. bus ____ (5) W. Va. & Md. bus ____ (6) Walk ____ (7) Own Automobile ____ (8) Share-ride car ____ (9) Taxi ____ (10) Other ____.

D. Ordinarily, in going home, what transportation do you use after leaving bus checked in Item B? (Check each facility used): (1) C. T. Co. bus ____ (2) C. T. Co. streetcar ____ (3) A. B. & W. bus ____ (4) A. & F. bus ____ (5) W. V. & Md. bus ____ (6) Walk ____ (7) Own Automobile ____ (8) Share-ride car ____ (9) Taxi ____ (10) Other ____.

E. How much do you have to pay for each one-way trip between your home and office? (Check one item for A. M. and one for P. M.).

(1) 5¢ ____ A. M. ____ P. M. (2) C. T. Co. pass and 5¢ ____ A. M. ____ P. M. (3) Token and 5¢ ____ A. M. ____ P. M. (4) 10¢ ____ A. M. ____ P. M. (5) Token and A. B. & W. ticket ____ A. M. ____ P. M. (6) Token and 10¢ ____ A. M. ____ P. M. (7) C. T. Co. pass and 10¢ ____ A. M. ____ P. M. (8) A. B. & W. ticket ____ A. M. ____ P. M. (9) 15¢ ____ A. M. ____ P. M. (10) A. B. & W. ticket and 10¢ ____ A. M. ____ P. M. (11) C. T. Co. pass and A. B. & W. ticket ____ A. M. ____ P. M. (12) 20¢ ____ A. M. ____ P. M. (13) Other (Specify) ____ ____ A. M. ____ P. M.

F. How many minutes does it take you to get from your home to work? ____ minutes. From work? ____ minutes.

G. Ordinarily, how many times do you transfer from one commercial vehicle to another to complete each one-way trip? ____

H. If using C. T. Co. weekly pass, how many times per week is it used other than to and from work? ____

I. Would you like to arrange for regular rides with people who work in your building and live in your neighborhood? ____ Yes ____ No.

J. Time of arrival at building ____ A. M. Start work ____ A. M. Quit work ____ P. M. Time of departure ____ P. M.

K. Comments on bus service ____

Supervisor return form to: The Pentagon, Room 5B664, Temporary Bldg. T-7, Room 1049, Navy Annex, Arlington, Room 1042.

2022 *Exhibit 34*

WAR DEPARTMENT

Relationship between location of work and separations rate among civilian personnel, departmental service, May 1943

Group A Virginia	Group B, accessible locations in D. C.	Group C, inaccessible locations in D. C.
Office, Secretary of War.	Inspector General.	Finance.
Staff.	Army Service Forces:	National Guard.
Army Air Forces.	A. G. O.[1]	Quartermaster.
Army Service Forces:	Chaplains.	
Headquarters.	J. A. G. O.	
A. G. O.[1]	Officer Proc. Serv.	
W. A. C.	Provost Marshal.	
Chem. Warfare Serv.	Engineers.	
Ordnance.	Surgeon General.	
Signal.		
Transportation.		
Total Civilian Personnel, 22,290.	Total Civilian Personnel, 12,762.	Total Civilian Personnel, 5,794.
Average Separations Rate, 4.7%.	Average Separations Rate, 4.3%.	Average Separations Rate, 5.6%.

[1] A. G. O. is almost equally divided between Group A and Group B, and is therefore excluded from calculations of separations rates in this study.

Prepared by Research & Policy Branch, CPD-OSW, July 31, 1943.

2023 *Exhibit 35*

TABLE XI.—*Salary distribution of civilian personnel in Arlington Annex, Bureau of Naval Personnel, Navy Department*

	Groups with base pay of $1,440 or less	Groups with base pay above $1,440
P		7
SP-4 and above		1
CAF-1 and 2	636	39
CAF-3, 4, 5, 6		773
CAF-7 and above		36
CPC-1, 2, 3	66	
CPC-4 and above		2
Totals	702	838

16 August 1943.

2024 *Exhibit 36*

TABLE XII.—*Bureau of Naval Personnel average net amount of pay checks for normal 15-day period and overtime*

[Based on sample of 314 cases]

Salary per annum	Size of sample	Gross earnings	Deductions			Total	Net amount paid
			Withholding tax	C. S. C. retirement, 5%	War bonds		
$1,200	7	$62.50	$8.80	$2.50	$3.57	$14.87	$47.63
$1,350	10	67.50	6.20	2.75	2.18	11.13	56.37
$1,440	120	73.00	7.67	3.00	5.55	16.22	56.78
$1,500	5	76.04	8.80	3.13	5.00	16.93	59.11
$1,620	106	82.12	12.20	3.38	6.35	21.93	60.19
$1,680	4	85.16	8.90	3.50	3.12	15.52	69.64
$1,740	1	88.20	12.80	3.63	9.38	25.81	62.39
$1,800	22	91.25	11.02	3.75	5.17	19.94	71.31
$2,000	16	101.38	14.20	4.17	8.90	27.27	74.11
$2,040	1	103.41	16.80	4.25	12.50	33.55	69.86
$2,100	5	106.45	14.72	4.38	6.25	25.35	81.10
$2,300	6	116.59	16.80	4.80	10.62	32.22	84.37
$2,600	6	131.80	16.90	5.42	13.84	35.86	95.94
$2,900	1	147.01	24.80	6.05	12.50	43.35	103.66
$3,300	1	163.68	28.80	6.88	37.50	73.18	90.50
$3,400	1	167.84	18.40	7.09	37.50	62.99	104.85
$3,500	1	172.01	21.05	7.30	12.50	40.80	131.21
$4,600	1	217.84	31.60	9.59	6.25	47.44	170.40

16 August 1943.

2025 *Exhibit 37*

TABLE XIII.—*Relationship between location of work and separations rate among civilian personnel*

Month	Separations					Total personnel				
	Total separations Navy Dept.	Total separations in Arlington			Percentage of Arlington separations	Total Navy personnel	Total Arlington personnel			Percentage of Arlington personnel
		Bureau personnel	Marine Corps	Total			Bureau personnel	Marine Corps	Total	
1943										
Jan	749	98	48	146	19.6	19,390	1,749	1,139	2,888	14.8
Feb	494	59	29	88	17.8	19,410	1,648	1,142	2,790	14.3
March	577	57	49	106	18.3	19,604	1,711	1,198	2,909	14.8
April	489	52	41	93	19.0	19,956	1,714	1,169	2,883	14.4
May	699	59	56	115	16.4	19,318	1,658	1,135	2,793	14.3
June	701	62	61	123	17.5	19,800	1,642	1,098	2,740	13.8
July	724	81	54	135	18.6	20,010	1,601	1,047	2,648	13.2
Total	4,433	468	339	807						
Average					18.2	19,640			2,807	14.2

16 August 1943.

2026 *Exhibit 38*

HEADQUARTERS U. S. MARINE CORPS
WASHINGTON

TABLE XV.—*Average salaries received at various salary levels*

Per annum salary	Size of sample	Gross earnings	Deductions				Net amount paid
			Withholding tax	5% ret.	Bonds	Total	
$1,320	3	$67.50	$8.80	$2.75		$11.55	$55.95
$1,440	69	73.00	8.25	3.00	$5.89	17.14	55.86
$1,620	35	199.43	30.64	7.92	14.41	53.26	146.17
$1,680	6	85.16	12.80	3.50	6.67	22.96	62.19
$1,740	2	88.20	7.60	2.63	5.50	18.73	69.47
$1,800	32	91.26	12.72	3.75	8.18	24.65	66.60
$1,860	3	94.25	11.07	3.88	7.50	22.45	71.84
$1,920	4	97.33	10.20	3.88	7.50	24.08	73.25
$1,980	4	100.37	14.20	4.00	7.50	25.70	74.67
$2,000	7	101.30	13.46	4.17	7.23	24.86	76.45
$2,305	7	108.02	10.11	4.80	8.57	23.49	83.10
$2,600	3	219.67	34.67	9.03	12.29	55.99	163.67
$2,900	2	147.01	22.20	6.05	7.50	35.75	111.26
$3,200	3	159.51	24.80	6.67	29.17	60.64	98.87

2027 *Exhibit 43*

[Copy]

C. Vaughn Darby, C. P. A. John E. O. Feller, C. P. A.

MEMBERS AMERICAN INSTITUTE OF ACCOUNTANTS

DARBY AND FELLER

CERTIFIED PUBLIC ACCOUNTANTS

1010 Vermont Avenue

WASHINGTON, D. C., *August 16, 1943.*

Colonel ELBERT M. BARRON, J. A. G. D.,
Chief, Litigation Division,
Office of the Judge Advocate General,
Army Service Forces,
War Department,
Washington, D. C.

DEAR SIR: At the request of the Washington, Virginia & Maryland Coach Company, we are submitting the following information with respect to the depreciation charges taken on their books the first six months of the current calendar year.

Item	Amount	Rate (percent)
Motor coach equipment	$79,723.96	25
Motor coach accessories	1,854.00	24
Service cars	1,274.16	25
Garage equipment	1,950.48	12
Leasehold improvement	265.55	(1)
Furniture and fixtures	555.90	12

[1] Life of lease.

We trust that this information will assist you in your work.

Respectfully yours,

DARBY AND FELLER,
(Signed) By JOHN E. O. FELLER,
John E. O. Feller,
C. P. A.

JEOF:MWM.

2028

Exhibit 44

[Copy]

Harry C. Ames, Wilmer A. Hill, Harry C. Ames, Jr. Telephone National 9243.

LAW OFFICES OF

AMES, HILL & AMES

TRANSPORTATION BUILDING

WASHINGTON, D. C.,
ZONE 6,

August 17, 1943.

Colonel ELBERT M. BARRON,
Chief, Litigation Division,
Army Service Forces,
Office of the Judge Advocate General,
Washington, D. C.

DEAR COLONEL BARRON: In compliance with the request contained in the second numbered paragraph of your letter of August 12, 1943, addressed to the Arlington and Fairfax Motor Transportation Company, in connection with the pending investigation by the Interstate Commerce Commission in No. 28991, entitled Passenger Fares Between District of Columbia and Nearby Virginia, we submit the following break-down of depreciation accrual for the first six months of 1943, with the distinct understanding that

we do not thereby concede that the figures submitted have any relevancy to the issues in the proceeding in question:

Type of equipment	Amount	Rate of depreciation (percent)
Revenue equipment	$19,787.08	16⅔
Service car equipment	520.58	25
Shop and garage equipment	64.90	20
Furniture and office equipment	48.06	20
Miscellaneous equipment (signs)	17.57	50
Improvements to leasehold property (based on a leasehold period with the Railroad Company of 2 years)	1,551.00	50
Total	21,989.19	
Depreciation adjustment for fire loss	1,500.00	
	20,489.19	

For numerous reasons—at least one of which we believe will occur to you upon reflection—we are altogether unwilling to accede to your request, contained in the first numbered paragraph of your letter, for a breakdown of the amounts of income tax reported by our company to the Federal Bureau of Internal Revenue.

2029 We find also, in respect to the third numbered paragraph of your letter, that it will be impossible for us to produce the requested statement of revenues and net income derived from the operations of each of the various lines of our company.

Very sincerely yours,

(Signed) WILMER A. HILL.
Wilmer A. Hill,
Counsel for Arlington and Fairfax Motor Transportation Company.

WAH: ng.

2030 *Exhibit 45*

ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY

Property and reserve for depreciation, June 30, 1945

	Cost	Depreciation reserve
Land	$15,906.55	
Structures	107,117.83	$32,834.63
Revenue equipment	1,310,636.03	760,978.62
Service cars and equipment	19,076.44	8,445.94
Shop and garage equipment	28,535.67	7,614.01
Furniture and office equipment	8,476.79	2,504.82
Improvements to leased property	47,105.69	14,319.24
Construction in process	19,778.90	

Land and building to cost about $480,000.

Rates of depreciation used

Structures: Main garage, 2% per annum. Adjoining building, 4% per annum.

Revenue equipment: Busses: Until December 31, 1941, 1/8 of the cost for the first 5 years; thereafter, 1/2 of the remaining balance until retired. Since January 1, 1942, 25% of the cost for the first 3 years; thereafter, 1/2 of the remaining balance until retired. Busses under O. D. T. restrictions as to mileage, 10% per annum.

Fareboxes, etc., 10% per annum.

Service cars and equipment: 10% to 33⅓% per annum, depending on equipment.

Shop and garage equipment: 10% to 33⅓% uper annum, depending on equipment.

Furniture and office equipment: 10% per annum.

Improvements to leased property: Life of lease.

2031 *Exhibit 55*

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 1634

NOVEMBER 3, 1937.

IN THE MATTER OF RATES OF FARE AND TRANSFER PRIVILEGES ON STREET CAR AND BUS LINES OF THE CAPITAL TRANSIT COMPANY.

Formal Case No. 247

By the Commission: On June 19, 1936, the Capital Transit Company filed a petition requesting that its fare structure be changed so as to permit the sale of tokens at 8⅓ cents, and withdrawal of the $1.00 pass, retaining the other fares in effect, including the $1.25 pass. The pass system had been inaugurated for an experimental period by the company. As of January 3, 1937, the company withdrew the $1.00 pass.

On June 2, 1937, the company filed an amendment to its original petition, requesting modification so as to permit the sale of tokens at the rate of 8¾ cents. The petition, as amended, provided that the token rate should be made applicable to all operations of the transit company, whether street car or bus (except the Hains Point Bus Line), and the issuance of free transfers upon payment of the proposed token fare.

The original petition and the amended petition were co d by the Commision, but before determination it was deemed necessary that the valuation studies of the properties of the company

should be completed. Much of the valuation ground-work had been done by the Commission as to the properties of the predecessor companies, namely, The Capital Traction Company, Washington Railway and Electric Company, and the Washington Rapid Transit Company. Final valuations had not been determined because of the merger legislation; the subsequent acquisition by the merged company of the Washington Rapid Transit Company pursuant thereto, and important changes of tracks, buildings, and other physical properties incident to unified operation. The engineering and accounting studies of the transit properties were subsequently completed; and pursuant to statutory requirement a public hearing was held. At the conclusion of the hearing an opportunity was given to all interested parties to file briefs.

A second public hearing, pursuant to statutory notice, was held for the purpose of receiving evidence with reference to the petition of the company, as amended. At the conclusion of this hearing opportunity was afforded interested parties to file briefs.

The rates of fare and transfer privileges at present in force on lines of the Capital Transit Company are:

2032 Fares and Transfers

(A)

Cash fare, 10 cents; tokens, 4 for 30 cents; weekly pass, $1.25

Streetcar lines and "owl" bus lines.
Anacostia-Congress Heights.
Barry Farm-Garfield.
Bureau loop.[1]
Bureau of Standards.[1]
Chevy Chase loop.[1]
Connecticut Avenue.
East Washington suburban.
Fourth Street SW.
P Street.
Park Road.
Potomac Park.
South Washington.
Takoma Park feeder.
West end.
Woodley Road.
Zoo.

[1] 5-cent fare also accepted with no transfer privilege.

(B)

Cash fare, 10 cents; tickets, 6 for 50 cents; weekly pass, $1.25.

Burleith-Trinidad.
Hyattsville-Laurel.
Rhode Island Avenue.

(C)

Cash fare, 10 cents; weekly pass, $1.25

Connecticut Avenue express.
Massachusetts Avenue.
Petworth-Chillum.
Potomac Heights-Foxhall Village.[2]
Sixteenth Street.
Takoma express.

(D)

Special Bus Line

Hains Point; cash fare, 25 cents round trip; no transfers

2033 Transfers

(A)

Transfers between bus lines, between streetcar lines, and between bus lines and streetcar lines free upon payment of cash or token fare.

(A)-(B)

Transfers from (A) to (B) issued upon payment of 10-cent cash fare. Transfers from (B) to (A) issued upon payment of 10 cents cash or ticket (6 for 50 cents) and 2 cents.

(A)-(C)

Transfers issued upon payment of 10 cents cash fare only.

(B)-(C)

Transfers from (B) to (C) issued upon payment of 10 cents cash fare or ticket (6 for 50 cents) and 2 cents. From (C) to (B) 10 cents cash fare only.

[2] Tickets (6 for 50 cents) accepted and sold east of 35th Street and Reservoir Road only on eastbound buses.

Three-cent school tickets accepted on all streetcar lines and bus lines except Hains Point.

Problem

The petition, as amended, presents the question of whether, giving due consideration to the value of the properties of the company used and useful for transit purposes and to revenue and expense data, the company is entitled to an increase in token fare, and, if so, what increase. There is also presented the question of whether the increase requested, or any increase, would be reasonable to the public.

In reaching a conclusion on the question of rates charged by a utility, consideration must be given to the rights of both the utility and the public. (Minnesota Rate Cases, 230 U. S. 352.) The utility is entitled to a reasonable return upon the value of that which it employs for the public convenience. On the other hand, the public is entitled to demand that no more be exacted for the use of the utility's property than the service rendered is reasonably worth. Smyth v. Ames, 169 U. S. 466.) These pronouncements have been the guiding principle in the consideration of the record in this proceeding and the conclusions reached.

2034 With respect to the case under consideration, it was stated by the company that it is not possible to fix rates that would afford the company a reasonable return on fair value. The company further stated that it is willing to accept less than a fair return, but that it is in need of additional revenue. The immediate question before the Commission is not whether the entire rate structure gives to the company a reasonable return upon the fair value of its property. The purpose of this proceeding is to determine whether the company is entitled to increase the price at which tokens are to be sold. To determine this question consideration must be given to the whole rate structure and the relation of the token rate to other rates. It is a fact established by the record that a change in a particular schedule affects the revenues from other schedules. Before the Commission would be justified in disturbing an existing schedule consideration must be given to the probable effect upon revenues from other sources to determine whether, upon the entire structure, there would be an impairment of the company's earning capacity and a consequent decrease in net revenue available for return. The Commission must give consideration to the probable effect that any change would cause in the service and convenience to the public. It would not be for the common good to create a change that would impair the service or unduly inconvenience the public. Neither may the Commission refuse to grant an

increase if upon consideration of all factors such refusal would impair the service with its concomitant inconvenience to the public.

Uniformity of Rates

The Commission, for a substantial period of time, has felt the need of uniformity in the basic rates of fare for streetcar and bus service and in transfer privileges, a view held by many citizens associations, and particularly those in territories served by buses on which a straight 10-cent cash fare, or a combination 10-cent cash fare and ticket fare, sold at the rate of 8⅓ cents each, in groups of 6, are in effect. With the marked increase in bus service, this fare differential has, in recent years, become more pronounced, notwithstanding the fact that the Commission has required the company to charge the regular streetcar token rate where buses have replaced streetcars. The major substitutions have taken place on Connecticut Avenue between Rock Creek Park and Chevy Chase Circle and on the Anacostia Line. Fares and transfer differentials lead to confusion and dissatisfaction and tend to lessen the use of mass transportation facilities. A uniform system of fares on the streetcar and bus lines would be to the benefit of the public and company employees. The varied rates heretofore described are confusing to passengers and operating employees.

Valuation

As heretofore stated, the Commission believed an investigation as to the value of the properties a condition precedent to a determination of the petitioner's request, at least to the point where the Commission could determine whether the company was
2035 making a fair return, as contemplated by law. The essential elements recognized by the courts in determination of fair value are original or historical cost, reproduction cost new, reproduction cost new less depreciation, land, right-of-way, certain intangibles, and working capital. The Commission is now in possession of the necessary data.

The Commission is of the opinion after full review of the entire record, and study of the briefs, and routine reports of the company (which the record stipulated might be used), that the fair value of the properties of the company used and useful in the public service in the District of Columbia was not less than $23,000,000, as of May 1, 1937.

It should be noted that the above figure does not include property owned outside of the District of Columbia, or other property owned by the company but deemed by the Commission not to be used and useful for transportation service within the District

of Columbia. Certain additions and betterments have been made since the before-mentioned date. Furthermore, the figure does not constitute the Commission's determination of fair value, but represents a value below which it may not go as a base in the determination of whether, in the light of prevailing conditions, existing or proposed rate schedules yield a reasonable return. A finding of fair value of the properties will be made in the valuation proceeding.

Net Income Available for Return

The company's operations for the first 8 months of 1937 show net income of $516,167.10, as compared with $392,989.45 for a like period in 1936, without allocation as to location or classification of the property, an increase of approximately 31.3 percent. The net income from operations within the District of Columbia during 1936 was $717,925. (Exhibit No. 4). By the application of this percentage increase to the net income for the year 1936 the anticipated income for the year 1937 would be $942,635. The company witness (Exhibit No. 4) estimated a net income on District of Columbia operations for the year 1937, based upon actual figures for the first 4 months of $770,492. He was requested by the Commission to make a similar study on the basis of actual operations for the first 9 months. This he did and arrived at a figure of $872,787.

The company witness estimated that an increase in the price of tokens from 7½ cents to 8¾ cents would result in additional operating revenue (D. C.) of $334,476, and from 7½ cents to 8⅓ cents $168,812, if tokens were sold 3 for 25 cents, and $254,114 if tokens were sold 6 for 50 cents.

2036 The inclusion of passes in a rate structure causes greater difficulty and permits of greater error in estimating future earnings, when a change of fare is involved, than a system of cash and token fares only.

Wage Rates and Social Security Taxes

The record discloses that since the merger on December 1, 1933, there have been material changes in wage rates paid by the company; three general increases having been made, on March 30, 1934, April 1, 1935, and April 1, 1937. The total increase amounts to over $1,225,000 per annum. The average rate per hour for all labor in December 1933 was 53.29 cents, and in April 1937, 66.92 cents, an increase of 13.63 cents or 25.5 percent. In April 1937, wages represented over 71 percent of operating expenses, and trainmen's and bus operators' wages constituted nearly 63 percent

of all labor and nearly 45 percent of operating expenses. The rates in the latter group increased between December 1933, and April 1937, as follows:

	2-man trainmen	1-man trainmen	Bus operators
	Cents	*Cents*	*Cents*
Maximum rate, April 1937	67	74	74
Maximum rate, December 1933	51	56	51
Increase (cents per hour)	16	18	23
Percent increase (percent)	31.4	32.1	45.1

Social Security taxes have also added a burden to the company. In 1936 such taxes were paid at the rate of 1.1 percent, totaling $66,000, with $60,000 going to the District of Columbia and $6,000 to the Federal Government. During 1937, the rate is 3.2 percent, with an estimated payment (Exhibit No. 8) of $192,000, $120,000 to the District of Columbia, and $72,000 to the Federal Government. There will be further increases in subsequent years.

Rate of Return

In a valuation and rate proceeding, one test of the reasonableness of existing or proposed tariffs is whether they render or will render a fair rate of return. In the instant case, if the estimated net income of $872,787 under existing rates for the year 1937, hereinbefore described, be applied to the minimum value of $23,000,000, the company would receive a rate of return of 3.79 percent. The Commission recognizes that under the pronouncements of the courts, including the Supreme Court of the United States, this is not a fair rate of return. If this were the sole test, the company would be entitled not only to the token rate prayed for in the amended petition, but to even a greater increase in rate. This is not the whole problem. The Supreme Court has recognized that the mere raising of rates does not necessarily make for increased revenue, for frequently they result in such losses of patronage as to more than dissipate the anticipated gain. (State of Florida v. U. S., 282 U. S. 194.)

2037

Fares

The record contains data with reference to average fares at various periods. It was testified that the pass is used approximately 36 times per week, and that between 22 and 23 of the rides are in the category of revenue rides. The average revenue per pass ride for the first 8 months of 1936, when both $1.00 and $1.25 passes were sold, was 4.44 cents, and for the same period in 1937 4.8 cents, the increase being due to the elimination of the $1.00 pass

after January 2, 1937. The average revenue per passenger using the weekly pass in less than one-half of the basic cash fare. The average fare for all revenue passengers for the first 3 months of 1937 was 6.49 cents. The average fare per pass passenger during this same period was 1.69 cents less than the average for all revenue passengers. The revenue passengers decreased during the first 5 months of 1937, compared with similar months of 1936, as follows: January 1.35 percent, February 3.98 percent (with 1 less day in 1937), March 0.05 percent, April 4.4 percent, and May 6.2 percent. There were an increase of 4.8 percent in revenue, an increase of 2.1 percent in regular fare passengers, an increase of 27.4 percent in transfers collected, a decrease of 23.7 percent in revenue and transfer rides on weekly passes, a decrease of 5.2 percent in total revenue passengers, and an increase in net income of between 1 and 2 percent.

What the average revenue per passenger would be with tokens sold at 8⅓ cents or 8¾ cents is problematical. In view of the small differential between the cash fare and a token fare of 8¾ cents, undoubtedly many passengers would find it to their benefit to adopt the weekly pass in order to get a lower average fare, without increasing the revenue of the company.

The matter is further complicated by the fact that the Commission is not dealing with the whole rate structure but with one element. The Commission recognizes the token fare as one of the most important in any street railway or bus operation. This view is supported by the fact that practically every metropolitan mass transportation agency has such a type of fare in its rate structure.

The company witness presented an exhibit (No. 14) giving rates of fare in 37 cities, in addition to Washington, with populations in excess of 200,000. In only two of the 37 cities, St. Louis and Kansas City, does the rate structure have as small a differential as 1¼ cents between token and cash fare. Nine have an 8⅓ cents token with a 10-cent cash fare on street railway and bus lines; one has such rates on rail lines only; and one (a bus company) has such rates. Certainly the large group of token passengers, about one-third of the total, should be placed in the category of what the company witness termed wholesale riders. If the token
2038 rate is to occupy an important place, then there must not only be the convenience element applicable to both the company and the patron, but there must be sufficient economic gain to the purchaser to make it worth-while to purchase a given number of tokens.

Five-cent Fare

The Commission was urged to consider the proposal of placing into effect a universal 5-cent fare for an experimental period.

The proponents of the plan presented no evidence as to the probable results of such a fare on the company's revenues or the service rendered. The record shows that under a 5-cent fare revenue passengers would have to increase 31.5 percent to produce the same revenue that is being produced under existing rates; and that such increase in the total number of revenue passengers would require additional transportation facilities and would result in a greater operating cost than at present. It was estimated that under a 5-cent fare with free transfer privilege the company would suffer a reduction of $2,258,551 below revenues under existing rates, and that, if a 5-cent transfer were also put into effect, the reduction would be $1,303,877. It was further shown that under a 5-cent fare with the sale of transfers at 1 cent or 2 cents, the decrease in revenue would be $1,857,748 and $1,444,863, respectively. Upon all the evidence of record, the Commission is satisfied that a universal 5-cent fare would result in no net income and would therefore cause impairment to the service rendered the public.

Study Showing Possible Effect of Fare Change

The company witness presented an exhibit (No. 11) showing estimated revenue passengers for the year 1937, divided according to various existing rates, and stating by number and percentages those who could be affected by an 8¾ cents token rate. The formula and basic figures have been used to ascertain the possible effect of an 8⅓ cents token rate.

District of Columbia	Number	Fare decreased	No change	Fare increased
10-cent passengers on straight 10-cent lines	4,321,956	4,321,956		
Other 10-cent passengers	19,567,372		19,567,372	
8⅓ cent passengers	1,453,976		1,453,976	
7½ cent passengers	49,582,524			49,582,524
5 cent passengers	177,560		177,560	
3 cent passengers	4,775,379		4,775,379	
Miscellaneous fares	112,606		112,606	
Weekly pass revenue passengers	76,217,898		76,217,898	
Total	156,209,271	4,321,956	102,304,791	49,582,524
Percent of total		3	65	32

2039 If the token rate were increased to 8¾ cents, the 8⅓ cents passengers (1,453,976) would be shifted to the column headed "Fare Increased." The company witness estimated that with an 8¾ cents token rate there would be a 4 percent increase in revenue passengers on the straight 10-cent bus lines, no loss in 8⅓ cents ticket passengers, and a 6-percent loss in 7½ cents token passengers.

Improvements

The company witness presented an exhibit (No. 9) stating gross additions to road and equipment (not including the purchase of the Washington Rapid Transit Company) since the merger of $7,758,141, made up of the following items; track changes $2,733,658, new buses $2,959,191, streetcars $776,596, new garages $552,121, land $71,019, and other property $665,556. As of December 31, 1934, the company had quick assets of cash $1,187,213 and securities $4,009,490; and as of March 31, 1937, these assets amounted to $886,560 and $640,858, respectively.

In the course of the rate proceeding it was contended by some that if the service were improved the revenue of the company would be substantially increased. It was further contended that the most effective way of accomplishing this result would be to replace, at the earliest practicable date, many of the older cars now in service, a contention that no one attempted to refute. The tracks of the company are in better condition than they have been at any time in recent years. The company witness testified that the new cars recently purchased would result in less cost of operation.

The financial benefits to be derived from good tracks and rolling stock cannot be questioned. Poor tracks cause damage to cars, and vice versa. It is an established fact that new cars attract new riders. The Commission has repeatedly stressed the need for better cars, and the retirement of old equipment and replacement at a rate of at least 50 per year. The new cars, because of comfort and speed, are attractive to the public, and have increased patronage. The company has no monopoly of transportation in the District of Columbia, in view of the competition of private cars and low-rate taxicabs.

Last year the company, in order to purchase 71 buses and 45 streetcars, having substantially depleted its ready cash resources, was able to procure from local banking institutions, under an equipment trust, in modified form, $1,507,000. This to the Commission was highly desirable in that it strengthened local interest in the company and provided better equipment with which to serve the public.

The Commission is cognizant of the fact that in the normal conduct of its financial affairs a company is dependent upon its ability to satisfy those from whom it must obtain funds.
2040 The obtaining of money is, in certain instances, materially aided by reason of the personnel holding stock. Control of the Capital Transit Company is vested in one of the largest holding companies in the country, which also controls the Potomac Electric Power Company, the latter supplying all power used

by the transit company. If the funds which may be obtained from local banking institutions are limited, there seems little reason, particularly in view of the financial condition of the company controlling the stock of the transit company and the ability of that organization to obtain adequate security for any sum which might be invested in new streetcars or new buses, why sufficient funds should not be made available to satisfy the streetcar requirements. If, as contended by the company, its revenues will be increased by change in the token rate, and in the substantial amount estimated, further justification exists for the course set out herein.

No contention has been made by anyone that the company's interest and the interest of the public would not be materially aided by replacement of certain of the old rolling stock with new. The sole opposition to the request that old equipment be replaced has been the financial condition of the transit company. With the corporate set-up in control of the Capital Transit Company, with the ability of the controlling company to adequately protect itself under the most adverse circumstances, plus the outlet which the local operation affords for power of another operating company, and the proposed increase in token fare, with the estimated increase in revenues of the operating company, there seems little to be said in defense of the failure of the operating company to request, and the controlling company to make available funds with which to bring about the replacement of all old streetcars in the interest of the operating company and the riding public.

It is the opinion of the Commission that the interests of the public and of the company can best be served by denying the company's request to fix the token rate at 8¾ cents. It is of further opinion that a token rate of 8⅓ cents would be a reasonable rate and would establish a fair differential between tokens and cash fare, and that it is the highest token rate from which the company can obtain real financial benefit. The Commission is cognizant of the fact that with an 8⅓ or 8¾ cents token rate the company would not earn a fair return. It is common knowledge that similar transportation agencies throughout the country are not getting such a return. In the instant case, as heretofore pointed out, the Commission has been called upon merely to pass upon increase in token fare. To repeat, dealing with the sole question of token rate, the Commission is of the opinion that the 8⅓ cents token rate is reasonable to the public and the highest token rate which will, in the final analysis, inure to the financial benefit of the company. Fare increases should be the last approach to betterment of the financial condition of the company. Every field should be explored looking to new revenue and lessen-

ing of operating expenses. The most instantly productive is new equipment.

2041 In keeping with its premise, the Commission concludes that the token fare, in order to be effective, must have a differential in its favor as contrasted with a cash fare to justify its use by the public, and that tokens at the price stated should be sold in groups of 6. This number is sufficient to facilitate transactions between company employees and the public and to lessen the number of such transactions, with attendant speeding up of service.

FINDINGS

The Commission finds:

1. That the fair value of the property of the Capital Transit Company used and useful within the District of Columbia as of May 1, 1937, is not less than $23,000,000.

2. That the company is not earning a fair return upon such minimum value.

3. That an increase in the token fare to 8⅓ cents, to be sold in units of 6 for 50 cents, is fair and reasonable to the riding public and the highest token fare which will result in financial benefit to the company, such tokens to be valid for transportation on all streetcar and bus lines of the company (except the Hains Point Bus Line), with free universal transfers.

4. That the aggregate estimated number of passengers for the calendar year 1937 (Exhibit No. 11) is 156,209,271, and of this number 49,582,524, 32 percent, token passengers may sustain an increase in fare by virtue of change to 8⅓ cents token rate. It is probable that many of the passengers falling in the latter class will resort to the pass with a decrease in cost per ride over the existing token fare; that the remaining 106,626,747, 68 percent, passengers will receive a reduction in fare by inauguration of the new token fare, with free universal transfers, or will not have their fare affected by this order, it is ordered:

SECTION 1. That the Capital Transit Company be and it is authorized and directed to issue and sell tokens in units of 6 for 50 cents, such tokens to be valid for transportation on all streetcar and bus lines of the company (except the Hains Point Bus Line), and to issue free transfers upon the payment of such token fare, subject to existing rules and regulations to prevent abuse in the use of transfers.

SECTION 2. That all orders or parts of orders inconsistent with this order be and they are canceled to the extent, and only to such extent, that they are inconsistent.

2042 SECTION 3. That outstanding tokens and 8⅓ cents tickets at the effective date of this order shall be honored by the company.

SECTION 4. That this order become effective at 12:01 a. m., November 4, 1937.

By the Commission:

JAMES L. MARTIN,
Executive Secretary.

A true copy:
[SEAL]

E. J. MILLIGAN,
Executive Secretary.

(w).

2043 *Exhibit 56*

AUGUST 26, 1941.

Brigadier General B. B. SOMERVELL,
Chief, Construction Division,
Quartermaster Corps, U. S. A.,
War Department,
Washington, D. C.

DEAR GENERAL SOMERVELL: In view of our discussion about the new War Department Building before I went away, I feel I should convey to you the results of studies made since that time concerning the traffic conditions which will result from the location of the new building as proposed.

Since my return to the office last Thursday, I have had some discussion with our Staff Engineer, Mr. Locke, who was with us at lunch a couple of weeks ago. The results of our studies are very disturbing as to the traffic conditions which will result, even leaving out of consideration very substantial additional cost to this Company in carrying its portion of the traffic.

The following points may be mentioned, and if you have time I should like to go into the details of the figures supporting our conclusions:

1. The capacity of existing bridges is not sufficient to take care of the additional traffic which will result from the proposed War Department Building, giving consideration to the Navy Building already nearing completion. Furthermore, under assumptions which seem to me reasonable, an additional bridge with three traffic lanes in the maximum direction would still be insufficient to carry the traffic which is very likely to develop during peak periods under the assumption of one hour of spread between the starting times of the various offices in the building.

2. If the Quartermaster Depot site is utilized, we would be under the necessity of charging an additional 5-cent fare for a journey to

that point, although this would not by any means make up for the additional cost to the Company involved in the transportation to that location as compared with a site in West Potomac Park. A recalculation of the additional cost to the Company involved in service to the Experimental Farm site originally proposed indicates that an additional 5-cent fare should be charged even to the building at that location, unless the Government would supply the equipment necessary to furnish the service.

3. The various assumptions which go into the calculations which lead to the above conclusions do not, in my opinion, allow a sufficient factor of safety, and with any such allowance the conclusion is inescapable that serious congestion and delay will result from the location of either one or two buildings with a total capacity of 30,000 to 40,000 employees, in addition to the Navy Building with its 5,000 which is already under construction.

2044 4. The capacity assumed for the bridges, namely 1,500 vehicles per lane per hour, can only be attained with the utmost freedom of movement on both approaches. Such freedom of movement would be extremely difficult to obtain in view of the street layout and street use of the Washington side of the Potomac River.

I am sorry to have to burden you with these details, but feel that in view of our discussion I should convey them to you as promptly as possible.

Yours sincerely,

E. D. MERRILL, *President.*

EDM/ABU.

2045 *Exhibit 57*

[Copy]

FEBRUARY 16, 1943.

Refer: M–208172.

Mr. F. W. LOVEJOY,
Exec. Secretary, Washington Regional Committee of Defense Transportation Administrators,
Room 306, District Building, Washington, D. C.

DEAR MR. LOVEJOY: This responds to your letter of February 3, 1943, in which you suggest that I prepare a report or statement as a basis of a final discussion of trans-Potomac rates of fare between points in the District of Columbia on the one hand and Pentagon Building, Naval Annex and Army Air Force Building in the Federal Area of Arlington County.

It is my understanding that my opinion is desired as to the reasonableness of any proposal for bus fares between the points mentioned, especially if such proposal involves increases of any

existing fares. Your committee has already made a tentative proposal, which I understand has been countered by a tentative proposal by one or more of the companies concerned.

The reasonableness of charges for mass transportation of persons between separate sections of an urban area have always been recognized by carriers and regulatory bodies alike as being judged on a basis of their effect on the community rather than of the cost of the particular service. Zoning of fares to induce workers to reside outside the congested sections of the community has been an established practice. In Washington, transportation costs no more if your home is in the District six miles from the downtown section than it does if you have an apartment on M Street.

The recent construction of government buildings across the Potomac poses new transportation problems. The desiderata are (1) that the fares be not excessive for persons of the salary range employed in those buildings; (2) that fares to all such buildings be equal in order to make employment in each building equally attractive. The shortage of automotive equipment, especially tires, at this time makes two other considerations important: (3) that persons employed in those buildings shall have a fare advantage if they reside in Virginia near the buildings; (4) that all busses shall be loaded in both directions so far as possible. All of these desiderata are subject to the right of the carriers to obtain from their entire operations a sum sufficient to meet all expenses and a fair profit.

From their entire operations, the companies involved showed the following net income after reserve for income taxes for the year 1941 and for the first nine months of 1942:

	1941	9 mos. 1942
Capital Transit Co.:		
Bus	$193,740.99	$329,202.79
Street railway	1,104,227.92	1,003,866.90
A. B. & W.	107,856.82	108,595.06
A. & F.	14,743.48	9,652.87
W. V. & M.	16,841.84	20,504.59

2046 These net profits were after payment of salaries. As the stock of the last three companies is owned principally by their general officers or members of their families, it is of interest to note that the salaries of the general officers of the companies charged to operating expenses for 1941 were as follows:

A. B. & W.	$65,000.00
A. & F.	9,150.00
W. V. & M.	56,021.32

I have no record of the salaries paid for 1942.

It is apparent from these figures that an adjustment of fares between the points involved can be made, at least for the duration of the present congestion, without depriving the carriers (with the possible exception of the A. & F. Co.) of their accustomed profit. The great increase in net income has been due to the fact that, due to the increase in workers and the shortage of busses, they have been furnishing, during rush hours, service of a character which would be intolerable in normal times and which costs the carriers less per passenger. No better or more expensive service may be expected until the war is ended. Thus, a reduction in charges would be justified, both from the view of the value of the service furnished and of the effect on the community.

The solution is complicated by the fact that one company does not serve the entire area, and that, as to the Pentagon Building, the three Virginia companies as well as Capital Transit Co. are in competition. However, for the present purpose, I think it would be well to consider the problem as though one company were furnishing the complete service, and adjust the charges among them on an equitable basis.

The present fare situation is as follows:

Capital Transit Co., to and from Pentagon: 19th and C, 5 cents. 7th and Constitution, 5 cents (available only to persons arriving or leaving by Capital Transit Co.).

A. B. & W., all buildings: 12th and Pennsylvania, 10 cents (with 14-ride tickets to Air Force Building at $1.95). Memorial Bridge, 5 cents to Pentagon and Navy Building.

A. & F. Pentagon and Navy Buildings: 12th and Pennsylvania, 10 cents. Memorial Bridge, 5 cents. Rosslyn, 5 cents.

W. V. & M., Pentagon: 10th and E, 10 cents.

2047 From these figures it is apparent that Pentagon has a decided fare advantage over the other buildings, and that Capital Transit Co. offers the most attractive rates between that building and residential Washington except for those persons who can conveniently use the A. & F. shuttle service at Rosslyn. The effect of this advantage is shown on tables 1, 2, 3, and 4, attached hereto, which were prepared by Supervisor E. M. Hymans of my staff after a personal survey. They show that Capital Transit Co. carried an average of 8,769 persons to Pentagon during the rush hours each morning, as compared with 2,642 persons carried by the other companies at a higher fare. As the survey was made soon after Capital Transit Co. instituted service from 7th and Constitution, it is probable that an even greater proportion is carried by that company since the new route became more widely known.

This advantage is contrary to the public interest under present conditions. The Capital Transit Co. busses operating to Pentagon have a one-way empty trip, whereas persons riding busses of the other companies provide a partial return load, for busses which carried Washington workers to or from other Virginia points. Exceptions to this latter statement are the 5-cent shuttle runs from Memorial Plaza by A. B. & W., and from Rosslyn by A. & F. The critical shortage of busses and tires makes it undesirable to encourage use of busses which results in empty movements.

The simplest method of removing the discrimination in favor of Capital Transit Co. would be for the Virginia companies to establish a 5-cent fare between Washington and the three buildings. The effect of such reduction of fares, applied to the average number of passengers carried each week-day during December and January last, would be as follows:

	Per day
A. B. & W., decrease in revenue	$570.30
A. & F., decrease in revenue	176.25
W. V. & M., decrease in revenue	13.00

Even if it is assumed that the decrease in revenue from the present volume of passengers would not be offset by an increase in volume because of the reduced fare, the A. B. & W. Co. could probably absorb the loss, which would be about $170,000 per year. Its gross operating revenue for 1942 will probably exceed $2,000,000, an increase of $850,000 over 1941, and its net income before income taxes will probably exceed $750,000, an increase of more than $300,000 over 1941. (These estimates are based on results of the first 9 months; the report for 1942 has not yet been filed.)

The A. & F. Co. could not as easily absorb the decrease in revenue which, on the same basis, would be about $52,000 per year. Its gross operating revenue for 1942 will probably exceed $270,000, an increase of $145,000 over 1941, and its net income before income taxes will probably be about $83,000, an increase of about $58,000 over 1941.

The loss in revenue to W. V. & M. is negligible and would probably be more than compensated by an increase in passengers.

2048 A 5-cent fare, even if applied only during rush hours, is of doubtful reasonableness, per se. The expenses per bus mile have been increasing. For the third quarter of 1942, they were as follows:

	Cents
A. B. & W.	23.4
A. & F.	25.1
W. V. & M.	28.6
Capital Transit	32.4

The distances over the different routes are shown on table 8, attached hereto. They show that the distance from the Washington terminals to the buildings served range from 3.4 to 4.9 miles. It would thus require an average load of 25 passengers per trip (and 44 on the one-way Rosslyn loop) for the Virginia companies to meet expenses. It is improbable that any such load factor can be maintained. Nor can it be assumed that expenses per bus mile will not increase above those for the third quarter of 1942. On the other hand, the passengers handled to and from those buildings by the Virginia companies represent (with the exception of the two shuttle services) additional business created by the Government with little additional cost.

Your committee has recommended a joint $1.69 weekly rate, equivalent to 13⅓ cents per trip, between any point in Washington and the three buildings, or the cost of a Capital Transit token plus 5 cents. This proposal assumes the abolition of the present 5-cent fares of the Virginia companies. You favor retention of the Rosslyn shuttle service of A. & F., but propose that the fare be increased to 10 cents one way or 15 cents per round trip, without participation in the $1.60 rate.

Your proposal as to the other routes would not differ substantially from a proposal for a straight 5-cent fare by the Virginia companies, unless the Capital Transit Co. should accept a division less than the price of a token and thus permit the Virginia companies to obtain more than 5 cents. In respect of the ability of Capital Transit Co. to absorb a reduction in revenue, it is somewhat the same position as the Virginia companies. Its gross revenue from bus operations for 1942 will probably exceed $9,500,000, an increase of nearly $4,000,000 over 1941. Its net income before income taxes, resulting from bus operations in 1942, will probably approach $1,250,000, an increase of more than $900,000 over 1941.

I understand that at some stage of your consideration of the problem, a proposal was made for a 12-ride ticket for $1.75, with a division which would give the Virginia companies 8 cents and Capital Transit Co. 6⁷⁄₁₂ cents per trip. If the $1.60 ticket were divided in the same proportions, the Virginia companies would get 7.31 cents and Capital Transit Co. would get 6.02 cents per trip. As this division would give to Capital Transit Co. more than it now receives per revenue ride from its weekly pass passengers, it would not be unfair to that company. The effect on the Virginia companies is shown in tables 5, 6, and 7, attached hereto. They were prepared by Supervisor Hymans on the assumption that 80% of rush hour patrons and 50% of other patrons would use the $1.60 ticket. If the 5-cent fare on the Rosslyn shuttle is abol-

ished, the loss of revenue to A. & F. will be less than that shown.

I do not favor suggesting that the Virginia companies institute a 5-cent fare to the three buildings under present conditions. Although they could absorb the loss, and although a preferential rate for persons working for the armed forces could be justified, a justification for such suggestion would include a suggestion
2049 for a similar reduction by Capital Transit Co. for the same persons. I do not consider it desirable to become involved in the resulting rate complications at this time. As any other straight rate reduction for persons travelling to the three buildings would involve similar complications, a joint fare, equitably divided, seems to be the proper solution. A 12-trip rate of $1.60, if not limited to use during a limited period, would seem to be fair to all concerned. A higher rate could not be justified under present conditions.

Although it is desirable that no rate preference be given to use of busses of Capital Transit Co. to the buildings, a change in the present charge from 7th and Constitution would result in an increase of fares to holders of weekly passes and would arouse resentment. I believe the other adjustments would be sufficient to provide full return loads for the busses of the Virginia companies. However, the straight 5-cent fare between 19th and C and the buildings should be eliminated, and the fare made available only as a portion of a through route, as is done at 7th and Constitution.

The 5-cent fare from Memorial Plaza should be elimination, and the shuttle busses removed.

The 5-cent fare from Rosslyn should be eliminated. Although I would prefer that the $1.60 tickets be available through that point, I will not object to your suggestion.

The $1.95 ticket available to employees at the Air Force Building should not be considered in connection with this adjustment. There is no competitive advantage gained by A. B. & W. because of this rate, and it is less attractive than the $1.60 rate and thus will afford no advantage to that building over other buildings.

The proposal of your committtee, with any modifications which may be implied in the above comments, would seem to most nearly accomplish the desiderata stated at the beginning of this letter. I am willing to endorse an agreement in accordance therewith. It must be clearly understood that such endorsement would be personal, and would not reflect the views of the Commission by which I am employed nor bind it in any subsequent proceeding.

Supervisor Hymans made several suggestions for revision of operating practices, including transfer of the Rosslyn shuttle service from A. & F. to W. V. & M. I am making no comment on

such suggestions, as they involve considerations which are not within the reference of this problem to me.

Very truly yours,

W. Y. BLANNING, *Director.*

Atts.

cc Mr. W. A. Van Duzer, Director of Vehicles and Traffic, Municipal Center, 301 C Street NW., Washington, D. C. Mr. Milton E. Diehl, Office of Defense Transportation, Washington, D. C.

2050 TABLE 1.—*Passengers between District of Columbia and buildings served*

AVERAGE WEEKDAY BASED ON DECEMBER-JANUARY, 1943 ESTIMATES

	Pentagon Building	Navy Building	Army Air Forces
Preliminary estimate:			
Population of building	25,000	5,800	3,800
60% using mass transportation	15,000	3,480	2,280
75% to and from District of Columbia	11,250	2,610	1,710
Potential daily passengers	22,500	5,220	3,420
Passenger hauled as shown by counts and revenue data:			
A. M. rush	11,911	1,985	1,200
P. M. rush	10,634	2,096	900
Nonrush	3,220	1,090	504
Total passengers	25,765	5,171	2,604
Passengers distributed by carriers:			
Capital Transit Co	17,075		
Wash. Va. Md. Coach Co	260		
A. B. and W. Transit Co	5,270	3,536	2,604
Arl. & Fairfax M. T. Co	3,160	1,635	
Total	25,765	5,171	2,604
Percentage:			
Passengers to building population	103	89	68

2051 TABLE 2.—*Pentagon Building—Estimated distribution of passengers*

AVERAGE WEEKDAY, DECEMBER-JANUARY, 1943

	Capital Transit	W. V. M. Coach Co.	A. B. & W. Tr. Co.	A. & F. M. T. Co
A. M. rush:				
Main lines 10¢		42	1,800	800
Memorial Plaza, special or zone 5¢			20	20
Rosslyn shuttle 5¢				480
Capital Transit	8,709			
P. M. rush:				
Main lines 10¢		218	1,070	600
Memorial Plaza, special or zone 5¢				
Rosslyn shuttle 5¢				460
Capital Transit	8,366			
Nonrush: 10¢			2,400	820
Total	17,075	260	5,270	3,160

2052 TABLE 3.—*Navy Building Estimated distribution of passengers*

AVERAGE WEEK DAY—DEC.-JAN., 1943

	A. B. & W. Transit Co.	A. & F. M. T. Co.
A. M. rush:		
Main lines 10¢	600	400
Memorial Plaza, special or zone 5¢	810	15
Rosslyn shuttle 5¢		160
P. M. rush:		
Main lines 10¢	1,196	365
Memorial Plaza, special or zone 5¢	390	25
Rosslyn shuttle 5¢		120
Nonrush:		
10¢	540	540
5¢		10
Total	3,536	1,635

2053 TABLE 4.—*Army Air Forces Bldg.—Estimated distribution of Passengers*

AVERAGE WEEK DAY, DEC.-JAN. 1943	*A. B. & W. Transit Co.*
A. M. Rush	1,200
P. M. Rush	900
Nonrush	504
Total	2,604
Employees using tickets at 7½¢—based on sales	1,370
Employees paying cash	730
Transients	504
Total	2,604

2054 TABLE 5.—*W. V. & M. Coach Co.—Fare change*

ESTIMATED REVISION IN AVERAGE MONTHLY REVENUE

Present	Proposed
Pentagon: 260 passengers per day 6,760 passengers per month @ 10¢ = $676.00 Trips per day 13 Trips per month 338	Pentagon: Should now obtain at least 30 passengers per trip at 0.0731. 338 trips ×30 = 10,140 passengers @ .0731 = $741.23. Increase $65.23 per month.

2055 TABLE 6.—*A. B. & W. Transit Co.—Fare change*

ESTIMATED REVISION IN AVERAGE DAILY REVENUE

Present			Proposed	
Navy-Pentagon—10¢:				
A. M. rush:				
Navy	600		4,646 @ 80% = 3,717	
Pent	1,800		2,940 @ 50% = 1,470	
Total	2,400		5,187 @ 0.0731 =	$379.17
P. M. rush:			2,399 @ 0.10 =	239.90
Navy	1,196		7,586	
Pent	1,050			
Total	2,246			
Rush total	4,646			
Midday:				
Navy	540			
Pent	2,400			
Midday total	2,940			
10¢ pass. total	7,586	$758.60		
Navy-Pentagon—5¢:				
A. M. rush—Navy	810		1,220 @ 80% = 976 @ 0.0731 =	71.35
P. M. rush—Navy	390		1,220 @ 20% = 244 @ 0.10 =	24.40
Pentagon	20		1,220	
5¢ pass. total	1,220	61.00		
Army Air Forces:				
Employees ticket	1,370 @ .075 =	102.75	2,100 @ 80% = 1,680	
Employees 10¢	730 @ .10 =	73.00	504 @ 50% = 252	
Transients 10¢	504 @ .10 =	50.40	1,932 @ 0.0731 =	141.23
	2,604		672 @ 0.10 =	67.20
			2,604	
		1,045.75		923.25
Decrease per day				122.50

2056 TABLE 7.—*Arlington & Fairfax M. T. Co.—Fare change*

ESTIMATED REVISION IN AVERAGE DAILY REVENUE

Present			Proposed	
Navy-Pentagon—10¢:				
A. M. rush:				
Navy	400		2,165×80% = 1,732	
Pent	800		1,360 @ 50% = 680	
Total	1,200		2,412 @ 0.0731 =	$176.32
P. M. Rush:			1,113 @ 0.10 =	111.30
Navy	365		3,525	
Pent	600			
Total	965			
Rush total	2,165			
Midday:				
Navy	540			
Pent	820			
Midday total	1,360			
10¢ Pass. total	3,525	$352.50		
Navy-Pentagon—5¢:				
A. M. rush: Navy	15			
P. M. rush: Navy	25			
Nonrush:			50 @ 0.0731 = 3.66	
Navy	10		2.00 @ 0.10 = 2.00	
Pentagon	20			5.66
Total	70	3.50		

TABLE 7.—*Arlington & Fairfax M. T. Co.—Fare change*—Continued

ESTIMATED REVISION IN AVERAGE DAILY REVENUE

Present		Proposed	
2057			
Rosslyn shuttle—5¢:			
2,000 @ 5¢	$100.00	WVM Transfers:	
		350 @ .05 = $17.50	
		C T transfers:	
		850 @ .0731 = 62.14	
		800 @ .05 = 40.00	
			$119.64
Not affected:			
Pentagon-Navy-Virginia:		Same	
1,600 @ .10=$160			
400 @ .05= 20			
	180.00		180.00
Virginia-Dist. Columbia:		Same	500.00
5,000 @ .10	500.00		
Local in Virginia:		Same	
750 @ .10=$75.00			112.50
750 @ .05= 37.50			
	112.50		1,205.42
	1,248.50	$43.08	
Decrease per day			

2058 TABLE 8.—*Mileage of routes between District of Columbia, terminals and buildings served*

Between District of Columbia terminals and—	Capital Transit		W. V. M. 10th-E	A. B. & W. 12th and Penna.	A. & P.	
	7th Const.	19th-C			Memorial Bridge Plaza	Rosslyn loop
PENTAGON BLDG.						
Via 14th St. Bridge	3.4		3.9	3.6		
Via Memorial Bridge	4.2	3.4	4.7	4.1	2.6	3
NAVY BLDG.						
Via 14th St. Bridge and through Pentagon				4.9		
Via Memorial Bridge avoiding Pentagon				4.1	2.3	
Via Memorial Bridge and through Pentagon					3.9	
Direct avoiding Pentagon						2.8
Through Pentagon						4.4
ARMY AIR FORCES						
Via 14th St. Bridge				4.1		

2059 *Exhibit 58*

WASHINGTON REGIONAL COMMITTEE OF DEFENSE TRANSPORTATION ADMINISTRATORS

Minutes of meeting in anteroom to Hearing Room B in the Interstate Commerce Building, February 19, 1942, committee members M. E. Diehl, W. A. Van Duzer present, and F. W. Lovejoy, Executive Secretary.

This special meeting on the subject of trans-Potomac rates of fare between points in the District of Columbia and Pentagon Building, Naval Annex and Army Air Force at Gravelly Point, all in the Federal Area of Arlington County was arranged so that Mr. W. Y. Blanning, Director, Bureau of Motor Carriers, Interstate Commerce Commission, could meet with the Committee for the purpose of discussing a final settlement of the trans-Potomac fare matter with representatives of the transit companies present by invitation as follows:

E. D. Merrill, President, Capital Transit Company.

D. J. Locke, Staff Engineer, Capital Transit Company.

Leon Arnold, President, Washington, Maryland and Virginia Coach Company.

H. H. England, Secretary and Treasurer, Washington, Virginia and Maryland Coach Company.

W. A. Whittlsey, Attorney, Washington, Virginia and Maryland Coach Company.

F. K. Lane, President, Arlington and Fairfax Motor Transportation Company.

Robert Mitchell, Traffic Manager, Alexandria, Barcroft and Washington Transit Company.

Through the cooperation of Mr. Blanning, and at the request of the Committee, he had had Mr. Hymans, one of his supervisors, make an investigation of trans-Potomac fare problem. Mr. Hymans' report to Director Blanning, following his investigation, confirmed the Committee's view as to the reasonableness of its proposed 13⅓ cent intercompany trans-Potomac fare, as well as the desirability of eliminating the 5-cent shuttle rides from Lincoln Memorial Circle to Pentagon and Naval Annex.

2060 Again at the Committee's request Mr. Blanning on February 16 mailed a statement to the Committee, copies of which were also sent to the transit companies concerned, in which Mr. Blanning utilized the material in the Hymans report, together with additional views of his own to resummarize the case, expressing as his personal opinion that the Committee's proposals for an intercompany trans-Potomac fare of 13⅓ cents and the elimination of the 5-cent rides from Lincoln Memorial Circle represented positive steps toward the equalization of trans-Potomac fares at reasonable levels.

During the discussion in the meeting Mr. Blanning made a very definite contribution to an equitable solution of the fare problem by suggesting the possibility of a revenue split of interline fares among the participating companies so as to give the weakest of them, that is the Arlington and Fairfax Motor Transportation Company, a somewhat larger proportion of the revenue pool. This perhaps might be accomplished by allowing the Arlington

and Fairfax Company a higher rate for ticket coupons cashed by the trustee or custodian of the interline revenues.

During the discussion it was also brought out that because the 13⅓-cent rate of fare applied specifically to intercompany service, and that essentially no advantage would be gained by purchasers of interline tickets who traveled on Capital Transit Company's facilities all the way between points in the District of Columbia and the Pentagon Building, a provision might well be adopted that ticket coupons covering the Virginia part of the interline ride would not be accepted on Capital Transit Company's busses.

Mr. Lane pointed out the fact that his company could not stand the reduction of revenue resulting from the interline arrangement as readily as the other transit companies, but indicated his
2061 willingness to cooperate in the effort toward a reasonable adjustment of the trans-Potomac fare structure, especially if consideraion could be given in the split of revenues to his company's weaker financial position.

Mr. Mitchell inquired about the A. B. and W. Company's 7½-cent fare to Army Air Force, which in Mr. Blanning's statement was not included among the low fares to be eliminated. Mr. Mitchell reiterated his desire to have the 7½-cent rate discontinued, and Mr. Locke pointed out the chance that if it were allowed to continue the Public might eventually demand the same rate of fare to all of the buildings from downtown loops and terminals. The Committee then reaffirmed its conclusion to stand for the elimination of the 7½-cent rate of fare to Army Air Force.

Mr. Blanning, through the Committee, very kindly offered to suggest a basis upon which interline revenues might be divided among the participating transit companies. The company representatives seemed agreeable to this proposal, although the Committee expects that progress will be made toward an acceptable adjustment of the revenue matter among the companies, even before Mr. Blanning is able to prepare his proposal. In fact Mr. Blanning, as the meeting was breaking up, told Mr. Merrill he hoped the companies would be able to determine upon the split of interline revenues without waiting for him to make his suggestion. Essentially, of course, the Committee is not interested in the interline split except to encourage the adoption of Mr. Blanning's idea that there might be some variation in the apportionment of revenues so as to favor the weakest member of the group of transit companies.

In order that there shall be no misunderstanding about the Committee's position in all of these matters, as well as the
2062 positiveness of the Committee's support, whether before the Interstate Commerce Commission, the Transportation

Committee of the Senate, or the Office of Price Administration, or with any other interested agency, there is given below a statement of the Committee's conclusions, which with one or two amplifications conform exactly with the position the Committee has previously maintained.

The Committee concludes as follows:

1. That the trans-Potomac intercompany rate of fare between points in the District of Columbia and the three specified buildings in Arlington County should be 13⅓ cents, 2-coupon tickets to be sold in books of 12 for $1.60

The books of interline tickets to be sold only in the Pentagon, Naval Annex and Army Air Force Buildings.

The Virginia coupon of each interline ticket to be good only on busses of the Virginia transit companies.

The books of interline tickets to be good for a specified limited period, preferably however for not less than 60 days.

The users of interline books to be required to tear coupons out of the books in the presence of transit companies' representatives or bus operators.

2. That the following existing rates of fare should be eliminated or increased.

The 5-cent fare charged by the Arlington and Fairfax Company between Lincoln Memorial Circle and Pentagon or Naval Annex to be eliminated.

2063 The 5-cent fare charged by the A. B. & W. Company between Lincoln Memorial Circle and Pentagon or Naval Annex to be eliminated.

The 5-cent interstate fare charged by Capital Transit Company from 19th and C Streets, NW. to Pentagon Building to be eliminated. (The Committee agrees that the fare structure applicable to Capital Transit Company's westerly loop should conform with the fare structure now in effect on the easterly loop from 7th and Constitution Avenue to Pentagon Building.)

The 7½-cent interstate fare charged by the A. B. & W. Company from its Washington terminal to Army Air Force to be eliminated.

The 5-cent fare charged by the Arlington and Fairfax Company between Rosslyn Circle and Pentagon or Naval Annex to be increased to 10 cents one way or to 7½ cents on a round-trip ticket rate of 15 cents.

The meeting adjourned to allow the companies an opportunity to consider the Committee's proposals in the light of Mr. Blanning's letter of February 16, including the split of revenues from interline tickets. The Committee hopes too that the companies will be able to expedite their negotiations even without any sug-

gestions from Mr. Blanning, because there seems to be no doubt as to the reasonableness of the 13⅓-cent rate for the interline service to employees of the three specified buildings, while there is plenty of indication that trans-Potomac fares must be adjusted as promptly as possible. We feel that such an adjustment made now on the proposed basis will gain public acceptance.

F. W. LOVEJOY,
Executive Secretary.

2064 *Exhibit 59*

Presented to Regional Committee at Conference held Saturday, March 13, 1943.

WASHINGTON, D. C., *March 9, 1943.*

WASHINGTON REGIONAL COMMITTEE OF
DEFENSE TRANSPORTATION ADMINISTRATORS,
Washington, D. C.

GENTLEMEN: Your Committee for some time has insisted upon the establishment of a uniform and reduced rate of fare between all points in the District of Columbia and the Pentagon, Navy Annex and the Army Air Force Buildings, shall be 13⅓¢ per County, Virginia. During the many discussions of this matter, various proposals of a rate of fare have been suggested, varying from 15¢ to 13⅓¢ per trip, over a combination of carriers.

At the last meeting of your Committee and the representatives of the undersigned transportation companies, advisory reports were submitted by Mr. Blanning and Mr. Hyman of the Interstate Commerce Commission, Bureau of Motor Carriers, suggesting that the fair and reasonable rate should be 13⅓¢ per one-way trip. The following proposal, we believe, meets all the conditions suggested by you as contained in the minutes of the meeting of February 19, 1943:

1. The trans-Potomac intercompany rate of fare, between points in the District of Columbia and the Pentagon, the Navy Annex and the Army Air Forces Buildings, shall be 13⅓¢ per trip.

(a) This fare to be evidenced by 2 coupon tickets, sold in books of not less than 12 one-way rides for $1.60 per 12 rides.

(b) These books to be sold to employees of the War and Navy Departments located in the Pentagon, the Navy Annex and the Army Air Forces Building only, and to be valid for transportation to and from those points only.

(c) The Virginia coupon of each interline ticket to be good only upon the buses of the three Virginia transportation companies serving the said three buildings in Arlington County.

(d) The tickets (and coupons) contained in these books to be good only when presented in the book to the driver of the vehicle, and to be valid for sixty days.

2065 2. Certain rates of fare now existing between specified points in the District of Columbia and/or Virginia, simultaneously with the effectiveness of the rate of fare in paragraph 1, suggested, shall either be eliminated or charged as follows:

(a) The 5¢ fare charged by the Arlington and Fairfax Motor Transportation Company and/or the Alexandria, Barcroft and Washington Transit Company, from Memorial Circle to the Pentagon Building and/or Navy Annex, shall be eliminated.

(b) The 5¢ fare charged by the Capital Transit Company from 19th and C Streets NW. to and from the Pentagon Building, shall be abandoned, and the same fare structure now used by Capital Transit on its 7th Street and Constitution Avenue loop (to wit, a District fare plus 5¢) shall be substituted.

(c) The 7½¢ interstate rate charged by the Alexandria, Barcroft and Washington Transit Company from Washington to and from the Army Air Forces Building, shall be eliminated.

(d) The 5¢ fare charged by the Arlington and Fairfax Motor Transportation Company between Rosslyn and the Pentagon or Navy Annex Building, shall be abandoned, and that rate increased to 10¢ cash and/or the use of 15¢ round trip tickets in books of not less than 6 round trips for 90 cents per book.

3. This interline rate of fare shall be instituted for the duration of the emergency or until December 31, 1944, whichever date shall be the earlier.

The proposals in paragraphs 1, 2, and 3 above are the substance of an agreement to which the undersigned companies can agree, if and when your Committee shall obtain from the proper regulatory agencies, both Federal and State, their consent to the establishment of this fare structure within the area specified, and upon the fares set forth being made effective.

It is to be understood, however, that none of the companies involved herein voluntarily agrees that the rate of 13⅓¢
2066 per trip is reasonable for the service rendered. The companies contend that the existing rates of fare are fair and equitable, except in certain specified instances where a 5¢ rate now prevails, which rate, it is contended, is too low for the service performed.

The companies, however, desire to show their willingness to cooperate with your Committee in its efforts to utilize the transportation facilities to their maximum capacity, and to do what

they can to be of service to the government during this time of war.

Yours very truly,

CAPITAL TRANSIT COMPANY,
By E. D. MERRILL, *President.*
ARLINGTON & FAIRFAX MOTOR TRANSPORTATION CO.
By F. K. LANE, *President.*
ALEXANDRIA, BARCROFT & WASHINGTON TRANSIT CO.
By R. T. MITCHELL, *2nd Vice President.*
WASHINGTON, VIRGINIA & MARYLAND COACH CO.,
By JOSEPH L. ARNOLD,
Vice President and General Manager.

AMERICAN TRANSIT ASSOCIATION, 292 MADISON AVENUE, NEW YORK, N. Y.

Suburban zone fare rates charged by transit companies operating in Eastern United States

[Based on Reports as of November 1942]

	Location of route		Miles of line	Number of zones	Rate per zone	Average length of zone	Average rate per mile
	From—	To—					
Ashland & Shamokin Auto Bus Co., Mt. Carmel, Pa.	Ashland	Mt. Carmel	7.00	4	7¢, 15/$1.00	1.75	4.00 & 3.81
Atlantic City & Shore R. R. Co., Atlantic City, N. J.	Atlantic City	Ocean City	10.40	5	10¢	2.08	4.81
Butler Motor Transit Co., Butler, Pa.	Butler	Evans City	14.00	8	5¢	1.75	2.86
	do	Unionville	9.00	5	5¢	1.80	2.78
County Transportation Co., Port Chester, N. Y.	Port Chester	Glenville	3.30	1	10¢	3.30	3.03
	Do	Pemberwick	2.30	1	10¢	2.30	4.35
	Do	Greenwich	3.20	1	10¢	3.20	3.13
	Larchmont	Mamaroneck	3.20	1	10¢	3.20	3.11
	Larchmont Manor	Larchmont Sta.	1.80	1	10¢	1.80	5.56
	Rye Sta.	Rye Beach	1.90	1	10¢	1.90	5.26
Connecticut Railway & Lighting Co., Bridgeport, Conn.	Bridgeport	Norwalk	14.04	4	10¢, 3/25¢	3.51	2.85 & 2.37
	Do	Easton	9.18	4	10¢, 3/25¢	2.30	4.35 & 3.62
	Do	Derby	14.75	4	10¢, 3/25¢	3.68	2.72 & 2.26
	Do	New Haven	17.73	5	10¢, 3/25¢	3.55	2.82 & 2.35
	Do	Orange Center	7.54	2	10¢, 3/25¢	3.77	2.65 & 2.21
	New Haven	Waterbury	27.52	8	10¢, 3/25¢	3.44	2.91 & 2.42
	Norwalk	Stamford	12.09	4	10¢, 3/25¢	3.01	3.32 & 2.77
	Waterbury	Watertown	6.56	2	10¢, 3/25¢	3.28	3.05 & 2.54
	Do	Prospect	5.23	2	10¢, 3/25¢	2.62	3.82 & 3.18
	Do	Naugatuck	4.90	2	10¢, 3/25¢	2.45	4.08 & 3.40
Delaware Bus Co., Wilmington, Del.	Wilmington	Newark	14.93	4	10¢, 4/30¢ [1]	3.73	2.55 & 2.01
	Do	Marshallton	7.67	2	10¢, 4/30¢ [1]	3.84	2.34 & 1.95
	Do	Montchanin	6.00	2	10¢, 4/30¢ [1]	3.00	3.00 & 2.50
Cayuga Omnibus Corp., Auburn, N. Y.	Auburn	Syracuse	27.50	31	5¢	0.88	5.68

[1] Wilmington city zone 8¢, 4/30¢; suburban zones, 10¢, 4/30¢.

AMERICAN TRANSIT ASSOCIATION, 292 MADISON AVENUE, NEW YORK, N. Y.—Continued

Suburban zone fare rates charged by transit companies operating in Eastern United States—Continued

	Location of route		Miles line	Number of zones	Rate per zone	Average length of zone	Average rate per mile
	From—	To—					
2068 Griffin Motor Coaches, Inc., Griffin, Ga.	Griffin	Hampton	11.00	3	10¢, 4/25¢	3.66	1.82 & 1.48
	Do	Fayetteville Rd	12.00	3	10¢, 4/25¢	4.00	1.67 & 1.35
	Do	High Falls Rd	12.00	3	10¢, 4/25¢	4.00	1.67 & 1.35
	Do	Milner	11.00	3	10¢, 4/25¢	3.66	1.82 & 1.48
Monongahela-West Penn Pub. Serv. Co., Fairmont, W. Va.	Fairmont	Riversville	5.00	3	7¢, 3/25¢	1.60	4.38 & 3.90
	Clarksburg	Wolf Summit	7.30	3	7¢, 3/25¢	2.43	2.88 & 2.57
	Parkersburg	South Parkersburg	3.70	1	10¢	3.70	2.70
Nassau Bus Line, Inc., Hewlett, L. I., N. Y.	Far Rockaway	Long Beach	3.50	3	5¢	1.17	4.27
Neibaver Bus Co., Philadelphia, Pa	Philadelphia	Morrisville	17.00	6	10¢, 7/50¢	2.83	3.50 & 2.52
	Bristol	Newtown	15.00	5	10¢, 7/50¢	3.00	3.33 & 2.02
Penn Transit Co., McKeesport, Pa	McKeesport	Irwin	10.00	5	5¢	2.00	2.50
	Greensburg	Youngwood	5.00	3	5¢	1.67	2.99
	Do	Scottdale	17.00	8	5¢	2.13	2.35
	Leechburg	New Kensington	12.00	6	5¢	2.00	2.50
Penobscot Transportation Co., Bangor, Me.	Bangor	Hampden	4.50	2	10¢	2.25	4.44
	Do	Brewer	2.7	1	10¢	2.70	3.70
	Do	Old Town	13.40	3	10¢	4.46	2.24
Potomac-Edison Co., Hagerstown, Md.	Hagerstown	Airport	5.00	2	15¢, 10/$1.00	2.50	6.00 & 4.00
	Do	Fountain Head Hgts	3.00	1	10¢, 10/75¢	3.00	3.33 & 2.50
	Do	Funkstown	3.00	1	10¢, 10/75¢	3.00	3.00 & 2.50
Reading Street Railway Co., Reading, Pa	Millmont	Temple	7.70	2	10¢	3.85	2.60
	Grill	Airport	7.10	2	10¢	3.55	2.82
Rochester Transit Corp., Rochester, N. Y.	Rochester	Pittsford	8.00	5	5¢	1.60	3.12
	Do	Sea Breeze	8.00	2	10¢	4.00	2.50
	Do	Summerville	8.00	2	10¢	4.00	2.50
Rockville Centre Bus Corp., Hempstead, L. I., N. Y.	Hempstead	Long Beach	10.70	10	5¢	2.14	2.34
2069 Schuylkill Valley Lines, Inc., Norristown, Pa.	Norristown	Trappe	9.70	3	10¢, 3/25¢	3.23	3.10 & 2.58
	Do	Trooper	3.8	1	10¢, 3/25¢	3.80	2.63 & 2.19
	Do	Oaks-Phoenixville	7.5	3	10¢, 3/25¢	2.50	4.00 & 3.33
Surface Transportation Co., White Plains, N. Y.	White Plains	Mt. Vernon	9.86	6	5¢	1.66	3.01
	Do	Tarrytown	6.51	5	5¢	1.30	3.85
	Do	Tuckahoe	4.25	3	5¢	1.42	3.52
	Do	North Pelham	3.66	2	5¢	1.83	2.73
	Do	Mamaroneck	7.20	4	5¢	1.80	2.78

	Third Avenue Railway Co., New York, N. Y.	Hastings	White Plains	11.00	7	5¢	1.57		3.18
		Tarrytown	do	6.00	5	5¢	1.20		4.16
		Rye Beach	do	6.00	6	5¢	1.00		5.00
	Union Street Railway Co., New Bedford, Mass.	New Bedford	South Dartmouth	5.00	2	10¢, 4/25¢	2.50	4.00 &	2.50
		Do	Mattapoisett	8.00	3	10¢, 4/25¢	2.60	3.85 &	2.40
		Do	Fall River	14.00	4	10¢	3.50		2.85
	Warwick Coach Lines, Malden, Mass	Malden	Stoughton	40.30	4	5¢	2.58		1.93
	West Penn Railways Co., Pittsburgh, Pa	Larimer	Greensburg	16.30	7	5¢	2.32		2.15
		Hecla	Latrobe	14.10	7	7¢, 4/25¢	2.01	2.48 &	3.11
		Uniontown	Fairchance	7.34	3	7¢, 4/25¢	1.84	3.80 &	3.40
		Connellsville	Dickerson	7.42	3	7¢, 4/25¢	2.47	2.83 &	2.53
	Westside Motor Transit Co., Charleroi, Pa.	Charleroi	Fayette City	6.35	4	5¢	1.59		3.14
		Do	Monessen	4.13	2	5¢	2.06		2.43
		Do	Fairhope	6.80	3	5¢	2.26		2.21
	York Bus Co., York, Pa	York	York Haven	10.75	5	7¢	2.15		3.26
		Do	Wrightsville	11.75	5	7¢	2.35		2.98
		Do	Dover	8.80	3	7¢	2.93		2.39
2070	York Utilities Co., Sanford, Me	Sanford	Biddeford	18.00	4	15¢	4.50		3.33
		Do	Dover	28.00	3	25¢	9.33		2.68

[1] Griffin city zone 10¢, 4/25¢, suburban zones, 5¢.

629604—45——65

2071 *Exhibit 65*

MAY 30, 1942.

Attention: Mr. W. Y. Blanning, Director

INTERSTATE COMMERCE COMMISSION,
Bureau of Motor Carriers, Washington, D. C.

GENTLEMEN: Under date of May 22, 1942, the Commission, by its Order No. MC 75289 SUB 7 TA, upon application of Capital Transit Company, granted temporary authority for a period of thirty days for the transportation of passengers by motor buses between the District of Columbia and the new War Department Pentagon Building in Arlington County, Virginia.

Pursuant to that authority, and the permit issued pursuant thereto, Capital Transit Company began such operations on Saturday, May 23rd, and is continuing to perform such services in accordance with said order and permit.

Because of the urgent necessity for such service and because Capital Transit Company has not sufficient bus equipment for its continued performance, the Company has tentatively arranged with Defense Plant Corporation for the operation in this service by Capital Transit Company of one hundred buses to be purchased by Defense Plant Corporation and leased to Capital Transit Company for the duration of the emergency. If the temporary authority and permit issued by the Interstate Commerce Commission should be terminated at the end of the thirty days both Capital Transit Company and Defense Plant Corporation would be greatly embarrassed by the necessity for a termination of this lease.

Since the War Department wishes and expects Capital Transit Company to continue this operation during the emergency, Capital Transit Company, therefore, urgently requests that said Order No. MC 75289 SUB 7 TA, granting temporary authority, and permit issued pursuant thereto, be extended to cover the duration of the emergency, or at least until December 31, 1944.

Capital Transit Company is advised by its counsel that there is no doubt as to the jurisdiction of the Interstate Commerce Commission in the premises or as to the validity of said Order and permit, since Capital Transit Company has no operating rights for intrastate operations in the State of Virginia from any Virginia authority, and inasmuch as the roads in the State of Virginia over which its operations are being conducted pursuant to the I. C. C. permit are on public highways and/or within reservations under exclusive jurisdiction of the United States we are advised that such operations are exclusively within the jurisdiction of the Interstate Commerce Commission by reason of

the provisions of section 206 (a) of Part II of the Motor Carrier Act of 1935.

Very respectfully,

E. D. MERRILL, *President.*

EDM/AEU.

2072 *Exhibit 66*

[Copy]

C-251-E

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 22nd day of June A. D. 1942

No. MC 75289, Sub. 7 TA

Application of Capital Transit Company (a Corporation), Washington, District of Columbia

After due investigation:

It appearing, that applicant in accordance with the provisions of Section 210a (a), Interstate Commerce Act, as amended, made application for temporary authority to operate as a common carrier by motor vehicle in interstate or foreign commerce as specified in the appendix hereto; that there is immediate and urgent need for such service; that there is not available any carrier service capable of meeting such need;

And it further appearing, that applicant has fully complied with all the applicable provisions of the said Act and with the requirements, rules and regulations prescribed by the Commission thereunder governing the filing of rate publications and the filing and approval of evidence of security for the protection of the public; therefore,

It is ordered, that applicant be, and it is hereby, granted temporary authority to operate as a common carrier by motor vehicle in interstate or foreign commerce in accordance with the specification in the appendix hereto.

And it is further ordered, that this order shall remain in force from the date hereof until the 31st day of December A. D. 1944, unless sooner revoked.

By the Commission, division 5.

[SEAL] W. P. BARTEL, *Secretary.*

2073 C–351–E

[Copy]

APPENDIX TO THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 5, DATED THE 22ND DAY OF JUNE A. D. 1942

No. MC 75289, Sub. 7 TA

Application of Capital Transit Company (a Corporation) Washington, District of Columbia

The service to be rendered by applicant as authorized by the order of which this is a part, in transporting in interstate or foreign commerce as a common carrier by motor vehicle, is as specified below:

Passengers and their baggage, over a regular route,

Between the District of Columbia and the site of the War Department, Pentagon Building, in Arlington County, Va.:

From Washington over Memorial Avenue to junction unnumbered highway, approximately 1,000 feet east of Arlington Ridge Road, and thence over unnumbered highway to the Pentagon Building and return over the same route.

Service is authorized at all intermediate points.

2074 *Exhibit 72*

CAPITAL TRANSIT COMPANY

WASHINGTON, D. C.

JANUARY 2, 1943.

INTERSTATE COMMERCE COMMISSION,
Bureau of Motor Carriers,
Section of Traffic,
Washington, D. C.

GENTLEMEN: Capital Transit Company is filing herewith three copies of MP–I. C. C. No. 77 covering interstate passenger tariff naming fares between points in the District of Columbia and the War Department (Pentagon) Building, Arlington, Va., via Pentagon shuttle bus operating between Constitution Avenue and 7th Street NW., Washington, D. C., and the Pentagon Building in Arlington, Va.

This tariff is filed supplementary to request for Temporary Authority under Section 210a (a) filed with the Commission under date of December 29, 1942, for operation between the above points, and issued with less than statutory notice under special permit of the Commission, No. M–36048, of January 2, 1943.

Very truly yours,

_____,
Vice President and Secretary.

WBB:RN.

cc—Messrs. Merrill, Emmons, Locke, Koontz, Dougan.

2075 MP–I. C. C. No. 77.

CAPITAL TRANSIT COMPANY

MC–75289, Sub 8 TA

Tariff showing rates of fare between points in the District of Columbia and the War Department (Pentagon) Building, Arlington, Va., via Pentagon shuttle bus operating between Constitution Avenue and 7th Street NW., Washington, D. C., and the Pentagon Building in Arlington, Va., via 14th Street (Highway) Bridge.

Issued January 2, 1943—Effective January 5, 1943—Expires with December 31, 1944.

Issued on one day's notice under authority of special permission of the Interstate Commerce Commission No. M–36018, dated January 2, 1943.

Issued by Wm. B. Bennett, Vice President and Secretary, 36th and M Streets NW., Washington, D. C.

2076 Tariff showing rates of fare between points in the District of Columbia and the War Department (Pentagon) Building, Arlington, Va., via Pentagon shuttle bus operating between Constitution Avenue and 7th Street NW., Washington, Va., via 14th Street (Highway) Bridge.

Cash Fare: 15¢ (D. C. cash fare of 10¢ plus Federal Reservation fare of 5¢).

Token combination Fare: 13⅓¢ (D. C. token fare of 8⅓¢ (6 for 50¢) plus Federal Reservation fare of 5¢).

Weekly Pass combination Fare: D. C. Weekly pass ($1.25) plus Federal Reservation fare 5¢.

2077 RULES AND REGULATIONS

METHOD OF FARE COLLECTION

Out-bound (between points in the District of Columbia and the Pentagon Building):

The District fare to be collected pay-enter on streetcars and buses, and transfers will be issued to the shuttle bus operating between Constitution Avenue and 7th Street NW., Washington, D. C., and the Pentagon Building, except to holders of weekly passes, and fares on the Pentagon bus (5¢) will be collected at the Pentagon Building.

In-bound (Pentagon Building to Washington, D. C.):

Through interstate fares will be collected at the Pentagon Building on boarding, and transfers will be issued on request to patrons not holding weekly passes.

SPECIAL RULES

Out-bound from Washington, D. C., to the Pentagon Building no alighting permitted except at the Pentagon Building, and no boarding permitted south of north end of Highway Bridge.

In-bound from Pentagon Building to Washington, D. C., no boarding permitted except at the Pentagon Building, and no alighting south of north end of Highway Bridge.

This interstate tariff applicable to all persons except infants in arms with an adult.

Under this tariff established transfer regulations of Capital Transit Company to apply.

No baggage other than hand baggage is carried.

2078 *Exhibit 89*

CAPITAL TRANSIT COMPANY

Pentagon Line—Income statement—7 months ended July 31, 1943

	Basis	Total	Per bus mile	Per passenger
			Cents	*Cents*
Passenger revenue	Actual	$179,524.55	41.98	5.00
Operating expenses:				
Maintenance of plant and equipment	System per bus mile	22,662.00	5.30	.63
Operating garage expenses	do	23,376.47	5.47	.65
Superintendence of transportation:				
Operations	Direct	13,350.17	3.12	.37
Schedules and traffic	do	4,618.65	1.08	.13
Bus operators' wages	do	48,364.39	11.31	1.35
Fare collectors, Pentagon	do	19,183.09	4.48	.53
Training	System per bus mile	2,090.12	.49	.06
Road expenses	do	165.65	.04	
Total transportation		87,772.07	20.52	2.44
Traffic promotion	System per bus mile	313.23	.07	.01
Administrative and general expenses:				
Injuries and damages	4% passenger revenue	7,180.98	1.68	.20
Other general and miscellaneous (excluding accounts 1345 and 1350)	System per bus mile	6,485.87	1.52	.18
Rent of equipment	Note [1]	7,875.00	1.84	.22
Total operating expenses		155,665.62	36.40	4.33
Depreciation	Note [2]	28,791.60	6.74	.80
Taxes		9,160.37	2.14	.26
Total operating expenses, taxes, and depreciation		193,617.59	45.28	5.39
Net loss for 7 months, before return		−14,093.04	−3.30	−.39
Return on investment	7% per annum	22,855.72	5.34	.64
Net loss for 7 months, including return		−36,948.76	−8.64	−1.03

[1] Average number of Defense Plant Corporation buses used on Pentagon Line, for which minimum annual rental is $1,500.

[2] The annual depreciation rate used is 10% for busses and 2% for garages, and this is applied to the equipment and housing facilities for equipment used in Pentagon operation.

Miles operated	427,663
Passengers (all at 5 cents)	3,590,491

9-1-43.

2079

Exhibit 90

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days

IN-BOUND AND OUT-BOUND TO AND FROM DISTRICT OF COLUMBIA

Companies	Pentagon Building											
	8-4-43				8-6-43				Average			
	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total
	Period 9:30 A. M. to 3:30 P. M.											
Capital transit	6,769	3,374		10,143	6,843	3,299		10,142	6,806	3,336		10,142
A. B. & W. Transit	0		1,347	1,347	0		1,266	1,266	0		1,307	1,307
A. & F. Transportation	0	285	314	599	0	238	342	580	0	262	328	590
Wash. Va. & Md. Coach			2	2			3	3			2	2
Total	6,769	3,659	1,663	12,091	6,843	3,537	1,611	11,991	6,806	3,598	1,637	12,041
	Period 9:30 A. M. to 3:30 P. M.											
Capital Transit	51			51	51			51	54			51
A. B. & W. Transit	0		2,021	2,021	0		2,231	2,231	0		2,126	2,126
A. & F. Transportation	0	36	337	373	0	26	449	475	0	31	393	424
W. V. & M. Coach												
Total	51	36	2,358	2,445	51	26	2,680	2,757	51	31	2,519	2,601
	Period 3:30 P. M. to 6:30 P. M.											
Capital Transit	5,451	3,475		8,926	5,325	3,411		8,736	5,388	3,443		8,831
A. B. & W. Transit	0		1,330	1,330	0		1,519	1,519	0		1,425	1,425
A. & F. Transportation	0	293	819	1,112	0	327	825	1,152	0	310	822	1,132
W. V. & M. Coach			356	356			343	343			349	349
Total	5,451	3,768	2,505	11,724	5,325	3,738	2,687	11,750	5,388	3,753	2,596	11,737
	Period 6:30 P. M. to 2:30 A. M.											
Capital Transit	78			78	75			75	77			77
A. B. & W. Transit	0		1,437	1,437	0		1,526	1,526	0		1,481	1,481
A. & F. Transportation	0	43	554	597	0	49	517	566	0	46	535	581
W. V. & M. Coach												
Total	78	43	1,991	2,112	75	49	2,043	2,167	77	46	2,016	2,139
	Period 2:30 A. M. to 6:30 A. M.											
Capital Transit												
A. B. & W. Transit	0		66	65	0		14	14	0		39	39
A. & F. Transportation	0	0	1	1	0	0	0	0	0	0	1	1
W. V. & M. Coach												
Total	0	0	66	66	0	0	14	14	0	0	40	40
	24-hour period											
Capital Transit	12,349	6,849		19,198	12,294	6,710		19,004	12,322	6,779		19,101
A. B. & W. Transit	0		6,200	6,200	0		6,556	6,556	0		6,378	6,378
A. & F. Transportation	0	657	2,025	2,682	0	640	2,133	2,773	0	649	2,079	2,728
W. V. & M. Coach			358	358			346	346			352	352
Total	12,349	7,506	8,583	28,438	12,294	7,350	9,035	28,679	12,322	7,428	8,809	28,559

[1] This 5¢ fare only in conjunction with other District of Columbia fares.
By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

IN-BOUND AND OUT-BOUND TO AND FROM DISTRICT OF COLUMBIA

Navy Arlington Annex

Companies	8-4-43				8-6-43				Average			
	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit	385		710	1,095	441		686	1,127	414		697	1,111
A. B. & W. Transit	4	66	232	302	2	61	313	376	3	64	272	339
A. & F. Transportation												
Wash. Va. & Md. Coach												
Total	389	66	942	1,397	443	61	999	1,503	417	64	969	1,450
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit	7		365	372	5		420	425	6		392	398
A. B. & W. Transit	0	0	245	245	0	0	240	240	0	0	243	243
A. & F. Transportation												
W. V. & M. Coach												
Total	7	0	610	617	5	0	660	665	6	0	635	641
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit	451		1,071	1,522	429		942	1,371	440		1,007	1,447
A. B. & W. Transit	0	74	345	419	26	75	301	402	13	74	323	410
A. & F. Transportation												
W. V. & M. Coach												
Total	451	74	1,416	1,941	455	75	1,243	1,773	453	74	1,330	1,857
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit	2		217	219	3		239	242	2		229	231
A. B. & W. Transit	0	16	40	56	0	11	68	79	0	13	54	67
A. & F. Transportation												
W. V. & M. Coach												
Total	2	16	257	275	3	11	307	321	2	13	283	298
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit	0		5	5	0		0	0	0		3	3
A. B. & W. Transit	0	0	0	0	0	0	0	0	0	0	0	0
A. & F. Transportation												
W. V. & M. Coach												
Total	0	0	5	5	0	0	0	0	0	0	3	3
24-hour period												
Capital Transit	845		2,363	3,208	878		2,287	3,165	862		2,325	3,187
A. B. & W. Transit	4	156	867	1,027	28	147	922	1,097	16	151	895	1,062
A. & F. Transportation												
W. V. & M. Coach												
Total	849	156	3,230	4,235	906	147	3,209	4,262	878	151	3,220	4,249

[1] This 5¢ fare only in conjunction with other District of Columbia fares. By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

IN-BOUND AND OUT-BOUND TO AND FROM DISTRICT OF COLUMBIA

Companies	Army Air Forces Annex									Wash. Natl. Airport		
	8-4-43			8-6-43			Average			8-4-43	8-6-43	Average
	7½¢	10¢	Total	7½¢	10¢	Total	7½¢	10¢	Total	10¢	10¢	10¢
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit												
A. B. & W. Transit	543	526	1,069	571	468	1,039	557	497	1,054	516	435	476
A. & F. Transportation												
Wash. Va. & Md. Coach												
Total	543	526	1,069	571	468	1,039	557	497	1,054	516	435	476
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit												
A. B. & W. Transit	62	179	240	74	215	289	68	197	265	467	511	489
A. & F. Transportation												
W. V. & M. Coach												
Total	62	179	240	74	215	289	68	197	265	467	511	489
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit												
A. B. & W. Transit	511	436	947	507	485	992	509	460	969	422	449	435
A. & F. Transportation												
W. V. & M. Coach												
Total	511	436	947	507	485	992	509	460	969	422	449	435
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit												
A. B. & W. Transit	77	98	175	66	119	185	71	109	180	511	600	556
A. & F. Transportation												
W. V. & M. Coach												
Total	77	98	175	66	119	185	71	109	180	511	600	556
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0	0	0	0	0	0	0	0	0	52	35	43
A. & F. Transportation												
W. V. & M. Coach												
Total	0	0	0	0	0	0	0	0	0	52	35	43
24-hour period												
Capital Transit												
A. B. & W. Transit	1,193	1,251	2,444	1,220	1,304	2,524	1,206	1,278	2,484	1,968	2,030	1,999
A. & F. Transportation												
W. V. & M. Coach												
Total	1,193	1,251	2,444	1,220	1,304	2,524	1,206	1,278	2,484	1,968	2,030	1,999

By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

2080 IN-BOUND TO DISTRICT OF COLUMBIA

Companies	Pentagon Building											
	8-4-43				8-6-43				Average			
	5¢	5¢ ¹	10¢	Total	5¢	5¢ ¹	10¢	Total	5¢	5¢ ¹	10¢	Total
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit	190	0		190	216	0		216	203	0		203
A. B. & W. Transit	0		179	179	0		187	187	0		183	183
A. & F. Transportation	0	14	29	43	0	10	27	37	0	12	28	40
W. V. & M. Coach												
Total	190	14	208	412	216	10	214	440	203	12	211	426
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit												
A. B. & W. Transit	0		822	822	0		978	978	0		900	900
A. & F. Transportation	0	15	192	207	0	13	270	283	0	14	231	245
W. V. & M. Coach												
Total	0	15	1,014	1,029	0	13	1,248	1,261	0	14	1,131	1,145
Period 3:30 P. M. to 6:30 P. M.												
Capital transit	5,135	3,475		8,610	4,977	3,411		8,388	5,056	3,443		8,499
A. B. & W. Transit	0		1,006	1,006	0		1,175	1,175	0		1,091	1,091
A. & F. Transportation	0	279	774	1,053	0	310	766	1,076	0	295	770	1,064
W. V. & M. Coach			356	356			343	343			350	350
Total	5,135	3,754	2,136	11,025	4,977	3,721	2,284	10,982	5,056	3,737	2,211	11,004
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit	24			24	24			24	24			24
A. B. & W. Transit	0		1,147	1,147	0		1,183	1,183	0		1,165	1,165
A. & F. Transportation	0	40	523	563	0	49	484	533	0	45	503	548
W. V. & M. Coach												
Total	24	40	1,670	1,734	24	49	1,667	1,740	24	45	1,668	1,737
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0		25	25	0		2	2	0		13	13
A. & F. Transportation	0	0	1	1	0	0	0	0	0	0	1	1
W. V. & M. Coach												
Total	0	0	26	26	0	0	2	2	0	0	14	14
24-hour period												
Capital Transit	5,349	3,475		8,824	5,217	3,411		8,628	5,283	3,443		8,726
A. B. & W. Transit	0		3,179	3,179	0		3,525	3,525	0		3,352	3,352
A. & F. Transportation	0	348	1,519	1,867	0	382	1,547	1,929	0	365	1,533	1,898
W. V. & M. Coach			356	356			343	343			350	350
Total	5,349	3,823	5,054	14,226	5,217	3,793	5,415	14,425	5,283	3,808	5,235	14,326

¹ This 5¢ fare only in conjunction with other District of Columbia fares. By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

IN-BOUND TO DISTRICT OF COLUMBIA

Navy Arlington Annex

Companies	8-4-43				8-6-43				Average			
	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total	5¢	5¢ [1]	10¢	Total
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit												
A. B. & W. Transit	5		41	46	12		60	72	9		50	59
A. & F. Transportation	4	1	18	23	2	0	21	23	3	1	19	23
W. Va. & M. Coach												
Total	9	1	59	69	14	0	81	95	12	1	69	82
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit												
A. B. & W. Transit	7		172	179	5		191	196	6		181	187
A. & F. Transportation	0	0	128	128	0	0	139	139	0	0	134	134
W. V. & M. Coach												
Total	7	0	300	307	5	0	330	335	6	0	315	321
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit												
A. B. & W. Transit	451		940	1,391	429		857	1,286	440		899	1,339
A. & F. Transportation	0	73	267	340	26	72	227	325	13	72	247	332
W. V. & M. Coach												
Total	451	73	1,207	1,731	455	72	1,084	1,611	453	73	1,146	1,671
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit												
A. B. & W. Transit	2		162	164	3		193	196	2		178	180
A. & F. Transportation	0	15	19	34	0	11	49	60	0	13	34	47
W. V. & M. Coach												
Total	2	15	181	198	3	11	242	256	2	13	212	227
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0		0	0	0		0	0	0		0	0
A. & F. Transportation	0	0	5	5	0	0	0	0	0	0	3	3
W. V. & M. Coach												
Total	0	0	5	5	0	0	0	0	0	0	3	3
24-hour period												
Capital Transit												
A. B. & W. Transit	465		1,315	1,780	449		1,301	1,750	457		1,308	1,765
A. & F. Transportation	4	89	437	530	28	83	436	547	16	86	437	539
W. V. & M. Coach												
Total	469	89	1,752	2,310	477	83	1,737	2,297	473	86	1,745	2,304

[1] This 5¢ fare only in conjunction with other District of Columbia fares.
By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

IN-BOUND TO DISTRICT OF COLUMBIA

Companies	Army Air Forces Annex									Wash. Natl. Airport		
	8-4-43			8-6-43			Average			8-4-43	8-6-43	Average
	7½¢	10¢	Total	7½¢	10¢	Total	7½¢	10¢	Total	10¢	10¢	10¢
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit												
A. B. & W. Transit	5	14	19	2	13	15	4	13	17	57	55	56
A. & F. Transportation												
W. V. & M. Coach												
Total	5	14	19	2	13	15	4	13	17	57	55	56
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit												
A. B. & W. Transit	13	67	80	26	96	122	19	82	101	203	229	216
A. & F. Transportation												
W. V. & M. Coach												
Total	13	67	80	26	96	122	19	82	101	203	229	216
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit												
A. B. & W. Transit	499	388	887	496	433	929	498	410	908	348	341	344
A. & F. Transportation												
W. V. & M. Coach												
Total	499	388	887	496	433	929	498	410	908	348	341	344
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit												
A. B. & W. Transit	54	55	109	35	76	111	44	66	110	221	277	249
A. & F. Transportation												
W. V. & M. Coach												
Total	54	55	109	35	76	111	44	66	110	221	277	249
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0	0	0	0	0	0	0	0	0	15	16	15
A. & F. Transportation												
W. V. & M. Coach												
Total	0	0	0	0	0	0	0	0	0	15	16	15
24-hour period												
Capital Transit												
A. B. & W. Transit	571	524	1,095	559	618	1,177	565	571	1,136	844	918	881
A. & F. Transportation												
W. V. & M. Coach												
Total	571	524	1,095	559	618	1,177	565	571	1,136	844	918	881

By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport; Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

2081 OUT-BOUND FROM DISTRICT OF COLUMBIA

Companies	Pentagon Building											
	8-4-43				8-6-43				Average			
	5¢	5¢[1]	10¢	Total	5¢	5¢[1]	10¢	Total	5¢	5¢[1]	10¢	Total
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit	6,579	3,374		9,953	6,627	3,299		9,926	6,603	3,336		9,939
A. B. & W. Transit	0		1,168	1,168	0		1,079	1,079	0		1,124	1,124
A. & F. Transportation	0	271	285	556	0	228	315	543	0	250	300	550
Wash., Va. & Md. Coach			2	2			3	3			2	2
Total	6,579	3,645	1,455	11,679	6,627	3,527	1,397	11,551	6,603	3,586	1,426	11,615
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit	51			51	51			51	51			51
A. B. & W. Transit	0		1,199	1,199	0		1,253	1,253	0		1,226	1,226
A. & F. Transportation	0	21	145	166	0	13	179	192	0	17	162	179
Wash., Va. & Md. Coach												
Total	51	21	1,344	1,416	51	13	1,432	1,496	51	17	1,388	1,456
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit	316			316	348			348	332			332
A. B. & W. Transit	0		324	324	0		344	344	0		323	334
A. & F. Transportation	0	14	45	59	0	17	59	76	0	16	52	68
Wash., Va. & Md. Coach												
Total	316	14	369	699	348	17	403	768	332	16	369	734
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit	54			54	51			51	53			53
A. B. & W. Transit	0		290	290	0		343	343	0		316	316
A. & F. Transportation	0	3	31	34	0	0	33	33	0	1	32	33
Wash., Va. & Md. Coach												
Total	54	3	321	378	51	0	376	427	53	1	348	402
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0		40	40	0		12	12	0		26	26
A. & F. Transportation	0	0	0	0	0	0	0	0	0	0	0	0
Wash., Va. & Md. Coach												
Total	0	0	40	40	0	0	12	12	0	0	26	26
24-hour period												
Capital Transit	7,000	3,374		10,374	7,077	3,299		10,376	7,039	3,336		10,375
A. B. & W. Transit	0		1,021	3,021	0		3,031	3,031	0		3,026	3,026
A. & F. Transportation	0	305	506	815	0	258	586	844	0	284	546	829
Wash., Va. & Md. Coach			2	2			3	3			2	2
Total	7,000	3,683	3,529	14,212	7,077	3,557	3,620	14,254	7,039	3,620	3,574	14,233

[1] This 5¢ fare only in conjunction with other District of Columbia fares.
By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

OUT-BOUND FROM DISTRICT OF COLUMBIA

Navy Arlington Annex

Companies	8-4-43				8-6-43				Average			
	5¢	5¢[1]	10¢	Total	5¢	5¢[1]	10¢	Total	5¢	5¢[1]	10¢	Total
Period 6:30 A. M. to 9:30 A. M.												
Capital Transit												
A. B. & W. Transit	380		669	1,049	429		626	1,055	405		647	1,052
A. & F. Transportation	0	65	214	279	0	61	292	353	0	63	253	316
Wash., Va. & Md. Coach												
Total	380	65	[illegible]	1,328	429	61	918	1,408	405	63	900	1,368
Period 9:30 A. M. to 3:30 P. M.												
Capital Transit												
A. B. & W. Transit	0		193	193	0		229	229	0		211	211
A. & F. Transportation	0	0	117	117	0	0	101	101	0	0	109	109
Wash., Va. & Md. Coach												
Total	0	0	310	310	0	0	330	330	0	0	320	320
Period 3:30 P. M. to 6:30 P. M.												
Capital Transit												
A. B. & W. Transit	0		131	131	0		85	85	0		108	108
A. & F. Transportation	0	1	78	79	0	3	74	77	0	2	76	78
Wash., Va. & Md. Coach												
Total	0	1	209	210	0	3	159	162	0	2	184	186
Period 6:30 P. M. to 2:30 A. M.												
Capital Transit												
A. B. & W. Transit	0		55	55	0		46	46	0		51	51
A. & F. Transportation	0	1	21	22	0	0	19	19	0	0	20	20
Wash., Va. & Md. Coach												
Total	0	1	76	77	0	0	65	65	0	0	71	71
Period 2:30 A. M. to 6:30 A. M.												
Capital Transit												
A. B. & W. Transit	0		0	0	0		0	0	0		0	0
A. & F. Transportation	0	0	0	0	0	0	0	0	0	0	0	0
Wash., Va. & Md. Coach												
Total	0	0	0	0	0	0	0	0	0	0	0	0
24-hour period												
Capital Transit												
A. B. & W. Transit	380		1,048	1,428	429		986	1,415	405		1,017	1,422
A. & F. Transportation	0	67	439	497	0	64	486	550	0	65	458	523
Wash., Va. & Md. Coach												
Total	380	67	1,478	1,925	429	64	1,472	1,965	405	65	1,475	1,945

[1] This 5¢ fare only in conjunction with other District of Columbia fares. By the companies.

Summary of trans-Potomac weekday rides between District of Columbia and Pentagon Building, Navy Arlington Annex, Army Air Forces Annex, and Washington National Airport, Wednesday, August 4, Friday, August 6, 1943, weather, clear both days—Continued

OUT-BOUND FROM DISTRICT OF COLUMBIA

Companies	Army Air Forces Annex									Wash. Natl. Airport		
	8-4-43			8-6-43			Average			8-4-43	8-6-43	Average
	7½¢	10¢	Total	7½¢	10¢	Total	7½¢	10¢	Total	10¢	10¢	10¢
	Period 6:30 A. M. to 9:30 A. M.											
Capital Transit												
A. B. & W. Transit	538	512	1,050	569	455	1,024	553	484	1,037	459	380	420
A. & F. Transportation												
Wash., Va. & Md. Coach												
Total	538	512	1,050	569	455	1,024	553	484	1,037	459	380	420
	Period 9:30 A. M. to 3:30 P. M.											
Capital Transit												
A. B. & W. Transit	49	112	161	48	119	167	49	115	164	264	282	273
A. & F. Transportation												
Wash., Va. & Md. Coach												
Total	49	112	161	48	119	167	49	115	164	264	282	273
	Period 3:30 P. M. to 6:30 P. M.											
Capital Transit												
A. B. & W. Transit	12	48	60	11	52	63	11	50	61	74	108	91
A. & F. Transportation												
Wash., Va. & Md. Coach												
Total	12	48	60	11	52	63	11	50	61	74	108	91
	Period 6:30 P. M. to 2:30 A. M.											
Capital Transit												
A. B. & W. Transit	23	43	66	31	43	74	27	43	70	290	323	307
A. & F. Transportation												
Wash., Va. & Md. Coach												
Total	23	43	66	31	43	74	27	43	70	290	323	307
	Period 2:30 A. M. to 6:30 A. M.											
Capital Transit												
A. B. & W. Transit	0	12	12	2	17	19	1	15	16	37	19	28
A. & F. Transportation												
Wash., Va. & Md. Coach												
Total	0	12	12	2	17	19	1	15	16	37	19	28
	24-hour period											
Capital Transit												
A. B. & W. Transit	622	727	1,349	661	686	1,347	641	707	1,348	1,124	1,112	1,118
A. & F. Transportation												

2083

Exhibit 98

CAPITAL TRANSIT COMPANY

Expenses and average expenses per bus mile

	7-months' period ending July 31, 1943		Subtotals 7-months' period ending July 31, 1943	
	Amount	Average cost per bus miles	Amount	Average cost per bus mile
Operating expenses:				
Superintendence of plant and equipment	$239,334	$0.00157		
Maintenance of buildings, fixtures, and grounds	17,894	.00116		
Maintenance of bus bodies	91,969	.00594		
Maintenance of bus chassis	523,304	.03382		
Tires and tubes	125,836	.00814		
Maintenance of shops and garage equipment	1,540	.00010		
Maintenance and operation of service car equipment	4,439	.00029		
Miscellaneous shop expenses	26,286	.00170		
Total	815,602	.05272	$815,602	$0.05272
Operating garage expenses:				
Fuel for revenue vehicles	536,112	.03465		
Lubricants for revenue vehicles	29,151	.00188		
Garage employees	239,463	.01548		
Garage supplies and expenses	41,231	.00266		
Total	845,957	.05467	1,661,559	.10739
Transportation:				
Superintendence of transportation	347,124	.02244		
Bus drivers and conductors	1,895,105	.12248		
Transportation rents	141	.00001		
Station expenses	21,669	.00140		
Road expenses	14,623	.00095		
Other transportation expenses	35,697	.00231		
Total	2,314,359	.14959	3,975,918	.25698
Traffic promotion:				
Superintendence and solicitation	585	.00004		
Advertising	10,737	.00069		
Traffic rents	94	.00001		
Total	11,416	.00074	3,967,334	.25772
Administrative and general expenses:				
Salaries and expenses of general officers	35,061	.00227		
Salaries and expenses of general office clerks	75,059	.00485		
General office expenses	11,221	.00073		
General law expenses	7,676	.00050		
Administrative supplies and expenses	18,267	.00118		
Employees welfare expenses	13,950	.00090		
Valuation expenses	479	.00003		
Injuries and damages	259,259	.01675		
Insurance	14,845	.00096		
Storeroom labor and expenses	16,927	.00109		
Rent of rolling stock	93,699	.00606		
Other general expenses	38,839	.00251		
Total	585,282	.03783	4,572,616	.29555
Total operating expenses—bus	$4,572,616	$0.29555	$4,572,616	$0.29555
Bus depreciation	$685,664	$0.04431	$5,258,270	$0.33986
Bus taxes	$417,670	$0.02700	$5,675,940	$0.36686
Total bus operating expenses, depreciation, and taxes	$5,675,940	$0.36686	$5,675,940	$0.36686
Total bus miles for period	15,471,551		15,195,904	

2084 *Exhibit 99.*

May 1943

STATISTICS ON CIVILIAN PERSONNEL

WAR DEPARTMENT, WASHINGTON, D. C.

2085 FOREWORD

Statistics on Civilian Personnel is issued monthly by the Civilian Personnel Division, Office of the Secretary of War. Strength and turn-over data, regularly included, are based on figures supplied by the Headquarters of Army Service Forces, Army Air Forces, and Army Ground Forces, by the Offices of the Chief of Staff and The Inspector General, and by the Army War College. All tables in these sections of the bulletin refer to the month ending May 31, and strength figures are as of May 31, 1943.

The special feature of this month's issue is a study of employment trends in the Federal Civil Service between 1916 and the present, with particular emphasis on the War and Navy Departments.

WM. H. KUSHNICK,
Wm. H. Kushnick,
Director of Civilian Personnel and Training.

JUNE 23, 1943.

2093 REPORT ON CIVILIAN PERSONNEL SEPARATIONS AND EXIT INTERVIEWS IN THE DEPARTMENTAL SERVICE DURING MAY 1943

Trend in Separations.—Separations in the departmental service showed an increase in May of 23.3%. A total of 2,309 employees were separated during May compared with 1,965 during April. The increase in separations—344—is almost entirely accounted for by the increase in the number of persons on leave without pay, 318. Therefore, if L. W. O. P.'s are disregarded, the number of separations remains practically constant for the two months. Transfers within the War Department continue to show an increase, totalling 1,377 as against 833 for April. This represents an increase of 65.3% against one of 28.5% for the preceding month. To summarize, the rate of separations in the departmental service for May was 5.3%. The rate for men and that for women were identical.

Types of Separations.—Resignations accounted for 40.1% of the May separations. L. W. O. P.'s represent 33.2%, a marked increase from the preceding month. Military furloughs, accounting for 11.5%, rank third. Together these three items make up 84.8% of all separations. Of the 1,737 female separations, resignations accounted for 44.8%, to be compared with 64.9% for the preceding month. L. W. O. P.'s represented 38.1% of female separations. The chief categories of male separations follow: military furloughs, 36.5%; resignations, 25.7%; and L. W. O. P.'s, 18.4%.

Net Changes in Personnel Strength.—The downward trend in the number of appointments continued. It dropped to 520 from an April total of 696, resulting in a net decrease of 1,889. Of the 520 appointments, 346, or 66.5% were women. This percentage has varied only slightly during the past four months, ranging from a high of 69.8% in February to a low of 63.9% in March. At the end of May, the percentage of women in the departmental service was 74.97%. The steady increase in the percentage of women employed in the departmental service has been halted, at least for the time being.

Reasons for Separations.—Work Factors were cited as reasons by 44.5% of men desiring separation, with Promotional Prospects as the leading factor. Women continue to cite Personal Factors as the chief reasons (47%), with Poor Health as the leading factor. The distribution of reasons given by employees for separation seems to vary but little from month to month.

The Exit Interview Program.—The percentage of possible exit interviews actually given increased from 52.7% in April to 56.5%. However, the percentage of interviews resulting in retentions remained constant at 17.7%.

While only 20.1% of the employees who were separated gave reasons classified under Work Factors, 58.2% of those retained gave reasons which fall in this category. The number of retentions was largest among those who had cited Promotional Prospects, Supervision, and Level of Work as reasons for leaving, these three categories representing 59.0% of the retentions.

2006 TABLE V.—*Civilian personnel separations from the departmental service, May 1943*

	Separations					
	By number			By percentage		
	Male	Female	Total	Male	Female	Total
I. Office, Secretary of War	23	48	71	3.1	4.8	4.6
II. Staff	13	38	51	5.2	2.7	3.1
III. Inspector General	3	1	4	9.4	1.2	3.4
IV. Army Air Forces	84	200	284	8.5	6.0	6.6
V. Army Service Forces—						
a. C. G. and Staff:						
1. A. G. O.	98	623	721	1.7	8.2	7.5
2. Headquarters	34	132	166	6.2	8.3	7.8
b. Administrative Services:						
1. Chaplains	1	6	7	4.9	13.0	10.5
2. Finance	39	263	302	5.2	7.9	6.7
3. J. A. G. O.	1	5	6	2.2	3.0	2.8
4. National Guard	0	0	0	0.0	0.0	0.0
5. Officer Procur. Service	2	10	12	6.1	3.5	3.7
6. Provost Marshal	1	14	15	2.4	5.2	4.9
7. W. A. A. C.	0	2	2	0.0	3.6	3.5
c. Supply Services:						
1. C. W. S.	9	26	35	5.7	5.6	5.6
2. Engineers	58	78	136	3.9	2.9	3.3
3. Ordnance	58	82	140	4.7	3.2	3.7
4. Quartermaster	86	79	165	9.1	3.4	5.1
5. Signal	28	69	97	3.9	3.3	3.5
6. Surgeon General	11	29	40	5.5	2.1	2.6
7. Transportation	23	32	55	3.4	2.2	2.6
Totals	572	1,737	2,309	5.3	5.3	5.3

2008 TABLE VII—*Distribution of separations by kinds, May 1943*

	Transferred out of W. D.	Resigned	Retired; died	Dropped	Removed	Furloughed (military)	LWOP over 30 days	Other	Total excluding transferred within W. D.	Transferred within W. D.	Grand total
I. O. S. W.	2	40	0	2	4	9	12	2	71	0	71
II. Staff	2	35	0	1	1	12	0	0	51	5	56
III. I. G.	0	4	0	0	0	0	0	0	4	0	4
IV. A. A. F.	6	108	2	11	0	26	131	0	284	223	507
V. A. S. F.											
a. C. G. & Staff:											
1. A. G. O.	8	177	3	50	7	53	423	0	721	299	1,020
2. Hdqts	32	58	0	2	0	26	48	0	166	28	194
b. Adm. Serv.:											
1. Chaplains	0	7	0	0	0	0	0	0	7	0	7
2. Finance	43	119	2	79	9	17	42	0	302	643	945
3. J. A. G. O.	0	5	0	0	1	0	0	0	6	2	8
4. N. Guard	0	0	0	0	0	0	0	0	0	1	1
5. O. P. S.	0	6	0	0	0	6	0	0	12	18	30
6. P. Marshal	1	10	0	0	0	1	0	3	15	2	17
7. W. A. A. C.	0	1	0	0	0	1	0	0	2	0	2
c. Supply Serv.											
1. C. W. S.	1	21	0	0	0	3	10	0	35	4	39
2. Engineers	10	60	1	9	5	26	34	0	136	12	148
3. Ordnance	10	77	0	12	0	22	19	0	140	29	169
4. O. Q. M. G.	4	72	0	20	6	21	42	0	165	17	182
5. Signal	0	71	0	0	0	16	3	7	97	70	167
6. S. G. O.	2	26	0	0	1	7	2	2	40	3	43
7. Transport	3	29	1	3	0	19	0	0	55	21	76
Totals	124	926	9	189	25	265	766	14	2,309	1,377	3,686

2099 TABLE VIII.—*Reasons given by employees for desiring separation, May 1943*

Reasons	Male	Female	Total
A. Community factors	(13)	(103)	(116)
1 Housing facilities	0	2	2
2 Transportation	2	5	7
3 Recreational-social facilities	0	1	1
4 Homesickness	1	26	27
5 General living costs	3	9	12
6 Locality	7	60	67
B. Work factors	(77)	(134)	(211)
7 Relations with fellow employees	0	3	3
8 Supervision	2	4	6
9 Physical conditions of work	1	1	2
10 Night shift	0	7	7
11 Insufficient work	1	2	3
12 Excessive work	0	2	2
13 Interest of work	5	9	14
14 Level of work	13	14	27
15 Usefulness	5	8	13
16 Salary received	17	22	39
17 Promotional prospects	29	52	81
18 Job security	4	10	14
C. Personal factors	(40)	(412)	(452)
19 Poor health	14	123	137
20 To be married	0	86	86
21 Maternity	0	30	30
22 To care for children	0	49	49
23 Husband or family moving	3	106	109
24 To go to school	8	16	24
25 To enter military service	15	2	17
26 Other reasons	43	228	271
Total	173	877	1,050

2110 *Exhibit 100*

June 1943

STATISTICS ON CIVILIAN PERSONNEL

WAR DEPARTMENT, WASHINGTON, D. C.

2111 WAR DEPARTMENT

OFFICE OF THE SECRETARY OF WAR

Civilian Personnel Division

WASHINGTON, D. C., *July 26, 1943.*

FOREWORD

Strength and separations tables appearing in Statistics on Civilian Personnel are compiled and presented from monthly reports of Headquarters, Army Air Forces, Army Service Forces, Army Ground Forces, of the Army War College, and of the Offices of the Chief of Staff, and The Inspector General. All tables in these sections of the bulletin refer to the month ending June 30, and strength figures are as of June 30, 1943.

As a result of the inauguration of new reporting forms it is xpected that beginning with the July issue it will be possible to ugment the present strength tables with more detailed informa- on on strength distribution.

Data used in the special study on employment of the physically andicapped appearing in this month's bulletin were obtained rom the U. S. Civil Service Commission:

WM. H. KUSHNICK,
Wm. H. Kushnick,
Director of Civilian Personnel and Training.

118 REPORT ON CIVILIAN PERSONNEL SEPARATIONS AND EXIT INTERVIEWS IN THE DEPARTMENTAL SERVICE DURING JUNE 1943

Trend in Separations.—Separations in the departmental service owed a very slight increase in June, the advance being 0.6%. A tal of 2,323 employees were separated during June compared ith 2,309 during May. Transfers within the War Department owed a marked decrease, totaling 742 as against 1,377 for May. his represents a decrease of 46.1% against an increase of 65.3% r the preceding month. The rate of separations in the depart- ental service for June was 5.7%, the rate for men being 7.5% nd that for women 5.1%.

Types of Separations.—Resignations accounted for 45.9% of e June separations. LWOP's represent 21.3%, a decrease from e preceding month. Military furloughs account for 12.1%. ogether these three items make up 79.3% of all separations. Of e 1,572 female separations, resignations accounted for 55.2% to compared with 44.8% for the preceding month. LWOP's epresented 18.5% of female separations compared to 38.1% last onth. The chief categories of male separations follow: military rloughs, 32.2%; LWOP's 27.0%; resignations, 26.5%.

Net Changes in Personnel Strength.—The number of appoint- ents increased for the month of June. There were 1,143 ap- ointments during June compared to 520 for May. Of the 1,143 ppointments, 909 or 79.5% were women. At the end of June, e percentage of women in the departmental service was 75.7% mpared to 74.9% for May.

Reasons for Separations.—Work Factors were cited as reasons 39.4% of men desiring separation, with Promotional Prospects the leading factor. Women continue to cite Personal Factors ost frequently, the percentage being 37.8%; poor health is here e leading factor. The large number of cases shown under Other Reasons" is ascribed chiefly to the inclusion of 259 em-

ployees who transferred to other Federal agencies following the decentralization of the War Bond Division.

Exit Interview Program.—Over the several month period in which the program has been studied, the percentage of possible interviews actually given has fluctuated very little, ranging between 50% and 57%. The current percentage is 55.1%. On the other hand the percentage of interviews resulting in retentions has declined gradually from 25% in January to a rate of 9.8% for June. This decline may be partially ascribed to the setting of ceilings and the subsequent decrease in total employment in the departmental service. Another influencing factor may have been a shift in emphasis on the part of personnel offices toward selective retentions rather than large numbers of retentions.

The number of retentions was largest among those who had cited Promotional Prospects, Job Security, Interest of Work, and Relations with Fellow Employees as reasons for leaving.

2121 TABLE V.—*Civilian personnel separations from the departmental service, June 1943*

	Separations					
	By number			By percentage		
	Male	Female	Total	Male	Female	Total
I. Office, Secretary of War	33	33	66	6.0	3.3	4.3
II. Staff	9	40	49	3.7	2.9	3.0
III. Inspector General	3	6	9	9.4	7.2	7.8
IV. Army Air Forces	68	199	267	7.8	6.3	6.8
V. Army Service Forces						
a. C. G. and Staff:						
1. A. G. O	315	330	645	16.6	4.6	7.1
2. Headquarters	16	66	82	4.2	4.1	4.1
b. Administrative Services:						
1. Chaplains	3	2	5	15.8	3.7	6.9
2. Finance	54	437	491	7.8	13.8	12.7
3. J. A. G. O	3	2	5	6.7	1.2	2.3
4. National Guard	0	2	2	0.0	4.4	3.2
5. Officer Procur. Service	1	8	9	3.1	2.9	2.9
6. Provost Marshal	2	11	13	4.7	3.9	4.0
7. W. A. C	0	2	2	0.0	3.1	3.0
c. Technical Services:						
1. C. W. S	12	17	29	7.6	3.8	4.8
2. Engineers	52	79	131	3.6	3.1	3.3
3. Ordnance	49	100	149	4.1	3.9	4.0
4. Quartermaster	56	94	150	6.2	4.2	4.8
5. Signal	30	49	79	4.4	2.4	2.9
6. Surgeon General	13	37	50	6.7	2.7	3.2
7. Transportation	32	58	90	4.9	4.3	4.5
Total	751	1,572	2,323	7.5	5.1	5.7

2122 TABLE VI.—*Civilian personnel separations, including transfers within the departmental service, June 1943*

	Separations					
	By number			By percentage		
	Male	Female	Total	Male	Female	Total
I. Office, Secretary of War	33	34	67	6.0	3.4	4.4
II. Staff	11	49	60	3.6	3.6	3.7
III. Inspector General	3	6	9	9.4	7.2	7.8
IV. Army Air Forces	76	268	344	8.7	8.7	8.7
V. Army Service Forces:						
a. C. G. and Staff:						
1. A. G. O.	370	470	840	19.5	6.6	9.3
2. Headquarters	17	98	115	4.4	6.1	5.8
b. Administrative Services:						
1. Chaplains	3	2	5	15.8	3.7	6.9
2. Finance	61	559	620	8.8	17.6	16.1
3. J. A. G. O.	3	3	6	6.7	1.7	2.8
4. National Guard	0	3	3	0.0	6.7	4.8
5. Officer Procur. Service	3	12	15	9.4	4.3	4.9
6. Provost Marshal	2	15	17	4.7	5.4	5.3
7. W. A. C.	0	2	2	0.0	3.1	3.0
c. Technical Services:						
1. C. W. S.	14	20	34	8.9	4.4	5.6
2. Engineers	66	135	201	4.5	5.2	5.0
3. Ordnance	55	119	174	3.5	4.7	4.6
4. Quartermaster	64	111	175	7.1	5.0	5.6
5. Signal	39	61	100	5.7	3.0	3.7
6. Surgeon General	16	43	59	8.2	3.1	3.8
7. Transportation	101	118	219	15.5	8.8	11.0
Total	937	2,128	3,065	9.3	6.9	7.5

2123 TABLE VII.—*Distribution of separations, by kinds, June 1943*

	Transferred out of W. D.	Resigned	Retired; died	Dropped	Removed	Furloughed (military)	LWOP over 30 days	Other	Total, excluding transferred within W. D.	Transferred within W. D.	Grand total
I. O. S. W.	1	32	0	0	1	14	17	1	66	1	67
II. Staff	2	33	0	0	0	6	8	0	49	11	60
III. I. G.	1	6	0	0	0	2	0	0	9	0	9
IV. A. A. F.	8	163	1	27	0	45	23	0	267	77	344
V. A. S. F.											
a. C. G. and Staff:											
1. A. G. O.	9	263	1	77	5	72	218	0	645	195	840
2. Hdqts.	2	54	0	1	0	11	44	0	82	33	115
b. Adm. Serv.:											
1. Chaplains	0	5	0	0	0	0	0	0	5	0	5
2. Finance	259	104	2	5	0	20	101	0	491	129	620
3. J. A. G. O.	0	1	0	0	0	4	0	0	5	1	6
4. N. Guard	0	1	1	0	0	0	6	0	2	1	3
5. O. P. S.	0	8	0	0	0		0	0	9	6	15
6. P. Marshal	2	10	9	0	0	1	0	0	13	4	17
7. W. A. C.	0	2	0	0	0	0	0	0	2	0	2
c. Tech. Serv.:											
1. C. W. S.	2	16	0	0	0	1	10	0	29	5	34
2. Engineers	5	63	2	0	1	27	33	0	131	70	201
3. Ordnance	12	82	0	7	0	29	19	0	149	25	174
4. O. Q. M. G.	9	82	0	1	3	13	36	6	150	25	175
5. Signal	1	56	0	0	4	16	2	0	79	21	100
6. S. G. O.	1	28	1	1	1	5	10	3	50	9	59
7. Transport	4	58	0	10	0	15	3	0	90	129	219
Total	318	1,067	8	129	15	282	494	10	2,323	742	3,065

2124 TABLE VIII.—*Reasons given by employees for desiring separation, June 1943*

Reasons	Male	Female	Total
A. Community factors	(5)	(78)	(83)
1. Housing facilities	0	1	1
2. Transportation	0	10	10
3. Recreational social facilities	0	0	0
4. Homesickness	0	25	25
5. General living costs	2	13	15
6. Locality	3	29	32
B. Work factors	(91)	(128)	(219)
7. Relations with fellow employees	1	3	4
8. Supervision	10	12	22
9. Physical conditions of work	1	2	3
10. Night shift	2	4	6
11. Insufficient work	0	3	3
12. Excessive work	0	0	0
13. Interest of work	5	10	15
14. Level of work	6	14	20
15. Usefulness	17	9	26
16. Salary received	16	16	32
17. Promotional prospects	29	48	77
18. Job security	4	7	11
C. Personal factors	(70)	(436)	(506)
19. Poor health	23	125	148
20. To be married	0	63	63
21. Maternity	0	46	46
22. To care for children	0	53	53
23. Husband or family moving	4	105	109
24. To go to school	11	31	42
25. To enter military service	32	13	45
26. Other reasons	65	512	577
Total	231	1,154	1,385

2138 *Exhibit 101*

Pentagon Line, allocation of expenses for 7-months' period ending July 31, 1943

RUNNING EXPENSES

	System	Pentagon	Cost per mile
Maintenance of bus bodies	$91,969	$2,542	$0.00504
Maintenance of bus chassis	523,304	14,465	.03382
Tires and tubes	125,836	3,478	.00813
Maintenance of shop and garage equipment	1,540	43	.00010
Maintenance and operation of service car equipment	4,439	123	.00029
Miscellaneous, shop expense	26,266	726	.00170
Fuel for revenue equipment	536,112	14,619	.03465
Lubricants for revenue equipment	29,151	806	.00188
Garage employees	239,463	6,619	.01548
Garage supplies and expenses	41,231	1,140	.00267
Road expense	14,623	404	.00094
Total	1,633,934	45,165	.10560

Pentagon Line, allocation of expenses for 7-months' period ending July 31, 1943—Continued

FIXED EXPENSES

	System	Pentagon	Cost per hour
Depreciation	$685,654	$10,842	$0.43101
Taxes	417,670	6,605	.26255
Overhead [1]	784,318	12,403	.49303
Injuries and damages	259,259	4,100	.16297
Total	2,146,901	33,950	1.34956
Fare collectors (as reported)		19,183	
Total	2,146,901	53,133	
Wages	1,895,105	29,969	1.19129
Grand total (including running)	5,675,940	128,267	
Cost per passenger per each trip		3.5726	

[1] Overhead:

Superintendent of plant and equipment	$24,354
Maintenance of buildings, fixtures, and garage	17,894
Superintendent of transportation	347,124
Transportation rents	141
Station expenses	21,869
Other transportation expenses	35,697
Traffic promotion	11,416
Salaries and expenses of general officers	35,061
Salaries and expenses of general office clerks	75,050
General office expenses	11,221
General law expense	7,676
Administration supplies and expenses	18,267
Employees' welfare	13,950
Valuation expense	479
Insurance	14,845
Storeroom labor	16,927
Rent of rolling stock	93,699
Other general expenses	38,830
	784,319

	System	Pentagon
Operating statistics:		
Hours	1,560,792	25,157
Miles	15,471,551	427,669

Hours computed at rate of 17 miles per hour based on trip of 25 minutes.
Passengers, 3,590,491.

2139

Exhibit 102

Computed cost per passenger between Pentagon and destination

	Cents
Cost per passenger between Pentagon and terminal, as per previous exhibit	3.57
Cost per passenger between terminal and point of destination, based on average distance of 2.7 miles:	
Mileage cost:	Cents
2.7 miles x 10.509 cents per bus mile (based on previous exhibit)	28.5
Hourly cost:	
18 minutes (based on 2.7 miles at average system speed of 9 miles per hour), at $2.54 per hour (based on previous exhibit)	76.2
Total cost per bus per trip	104.7

2140 *Exhibit 103*

WAR DEPARTMENT

Capital Transit Company Pentagon line revenues

[Service and traffic, one day per week, rush hours from January 1 to September 8, 1943]

	R-2	Q-2	Total
A. M.	201,497	76,374	
P. M.	162,155	88,626	
	363,652	165,000	528,652
	68.79%	31.21%	100%

Total passengers 3,590,491
R-2 Line 2,469,899
Q-2 Line 1,120,592

Fare on Q-2 Line:
Total fare 7.9¢ + 5¢ = 12.9¢.
Distance, terminal to Pentagon bldg., 3.5 miles.
Total average distance traveled, 6.2 miles.
Percentage of trip on Pentagon run, 56.45%.
Fare allocable to Pentagon run: 56.45% of 12.9¢ = 7.28¢.

Revenue:	
R-2 line 2,469,899 passengers @ 5¢	$123,495
Q-2 line 1,120,592 passengers @ 7.28¢	81,579
	205,074
Less: Allocated cost of service	128,267
Profit	76,807
Per cent profit, based on cost	59.9%

Exhibit 104

Effect of proposed trans-Potomac bus fares on minimum cost of bus transportation for War Department personnel employed at the Pentagon and at Gravelly Point

Item number	Present fare	Number of passengers				Minimum weekly rates			Increase or decrease			
		To work	From work	Total	Average	Present	Proposed	Difference	Daily	Weekly	Monthly	Yearly
1a	Capital Transit Co. line R-2:											
	10¢ and 5¢; 8½¢ and 5¢; pass and 5¢	6,383	4,718	11,101	5,550	n/c	n/c	n/c	n/c	n/c	n/c	n/c
	5¢ only	1,310	991	2,301	1,151	$0.60	$1.20	$0.60	$115.05	$690.30	$2,991.30	$35,895.60
	Subtotal	7,693	5,709	13,402	6,701							
1b	Capital Transit Co. line Q-2:											
	10¢ and 5¢; 8½¢ and 5¢; pass and 5¢	3,020	3,597	6,617	3,309	n/c	n/c	n/c	n/c	n/c	n/c	n/c
	Subtotal	3,020	3,597	6,617	3,309							
	Total, C. T. Co.	10,713	9,306	20,019	10,010				115.05	690.30	2,991.30	35,895.60
2	A. D. & W.; A. & F.; and W. V. & M. (12th & Penn. and 11th & E):											
	10¢ and 10¢; 8½¢ and 10¢	(705)	(715)	(1,420)	(710)							
	Can use Q-2	434	440	874	437	1.60	1.60	n/c	n/c	n/c	n/c	n/c
	Must use Va. bus	271	275	546	273	2.20	1.60	.60	(27.30)	(163.80)	(709.80)	(8,517.60)
	Pass and 10¢	(1,241)	(1,142)	(2,383)	(1,191)							
	Can use Q-2	765	704	1,469	734	1.85	1.85	n/c	n/c	n/c	n/c	n/c
	Must use Va. bus	476	438	914	457	2.45	1.99	.46	(35.04)	(210.22)	(910.95)	(10,931.44)
	10¢ only	375	336	711	356	1.20	1.20	n/c	n/c	n/c	n/c	n/c
	Total	2,321	2,193	4,514	2,257				(62.34)	(374.02)	(1,620.75)	(19,449.04)
3	Rosslyn shuttle (A. & F.):											
	W. V. & M. transfer	89	93	182	91	n/c	n/c	n/c	n/c	n/c	n/c	n/c
	5¢ only or 5¢ plus Old Dom. or Trailways	166	161	327	164			.30	9.20	49.20	213.20	2,558.40
	Pass and 5¢	206	178	384	192	1.85	1.02	.17	2.44	32.64	141.44	1,697.28
	10¢ and 5¢; 8½¢ and 5¢	240	245	485	242	1.60	1.60	n/c	n/c	n/c	n/c	n/c
	Total	701	677	1,378	689				13.64	81.84	354.64	4,255.68
4	Totals The Pentagon: Per passenger	13,735	12,176	25,911	12,956				66.35 .005	398.12 .037	1,725.19 .13	20,702.24 1.60

See footnotes at end of table.

Effect of proposed trans-Potomac bus fares on minimum cost of bus transportation for War Department personnel employed at the Pentagon and at Gravelly Point—Continued

Item number	Present fare	Number of passengers				Minimum weekly rates			Increase or decrease			
		To work	From work	Total	Average	Present	Proposed	Difference	Daily	Weekly	Monthly	Yearly
5	Gravelly Point (A. B. & W.):											
	10¢ and 10¢; 8½¢ and 10¢; 10¢ and ticket; 8½¢ and A. B. & W. ticket	486	408	894	447	$1.90	$1.60	$0.30	($22.35)	($134.10)	($581.10)	($6,973.20)
	Pass and ticket; pass and 10¢	894	751	1,645	822	2.15	[1] 2.05	.10	(13.70)	(82.20)	(356.20)	(4,274.40)
	Ticket or 10¢	104	54	158	79	.90	1.20	.30	3.95	23.70	102.70	1,232.40
	Total, Gravelly Point per passenger	1,484	1,213	2,697	1,348				(32.10)	(192.60)	(834.60)	(10,015.20) [a]
									(0.0238)	(0.14288)	(0.61914)	(7.4297)
6	Grand totals, trans-Potomac: Per passenger	15,219	13,389	28,608	14,304				34.25	205.52	890.59	10,687.04
									.002	.014	.06	.75

[1] $1.60 plus average use of pass other than to or from work of 6.65 @ 8½¢=$1.60+$0.39=$1.99.
[2] $1.60 plus average use of pass other than to or from work of 4.98 @ 8½¢=$1.60+$0.42=$2.02.
[3] $1.60 plus average use of pass other than to or from work of 4.45 @ 8½¢=$1.60+$0.45=$2.05.

MDW—4 June 1943.

2142 *Exhibit 105*

[Copy]

WASHINGTON REGIONAL COMMITTEE OF DEFENSE, TRANSPORTATION ADMINISTRATORS

ESTIMATED EFFECT OF TRANS-POTOMAC FARE PROPOSALS ON COST OF MASS TRANSPORTATION TO EMPLOYEES AT PENTAGON, NAVAL ANNEX, AND GRAVELLY POINT

Lower costs daily to riders on—	
Alexandria, Barcroft and Washington Trahsit Company's busses:	
Pentagon: 4,800 rides by interline ticket users at 5 cents saving	$240
Naval Annex: 2,040 rides by interline ticket users at 5 cents saving	102
Gravelly Point: 1,300 rides by interline ticket users, former purchasers of 7½-cent tickets, at 2½-cent saving	32
3,520 rides by interline ticket users at 5 cents saving	186
Total lower cost daily to riders	550
Arlington and Fairfax Motor Transportation Company's busses:	
Pentagon: 3,300 rides by interline ticket users at 5-cent saving	165
Naval Annex: 1,700 rides by interline ticket users at 5 cent saving	85
Total lower cost daily to riders	250
Grand total lower cost daily to riders	800
2143 Higher costs daily to riders on—	
Capital Transit Company's buses:	
Pentagon: 2,710 rides for walkers to 19th and C Streets Loop at 5-cent increase	135.50
Alexandria, Barcroft and Washington Transit Company's busses:	
Naval Annex: 100 rides for walkers to Lincoln Memorial Loop at 5-cent increase	5.00
Gravelly Point: 60 rides for walkers to 12th and Penna. Ave. Terminal at 2½-cent increase	1.50
Total higher cost daily to riders	6.50
Arlington and Fairfax Motor Transportation Company's buses:	
Pentagon: 20 rides for walkers to Lincoln Memorial Circle at 5-cent increase	1.00
Naval Annex: 40 rides for walkers to Lincoln Memorial Circle at 5-cent increase	2.00
Total higher cost daily to riders	3.00
Grand total higher cost daily to riders	145.00

WASHINGTON REGIONAL COMMITTEE OF DEFENSE, TRANSPORTATION ADMINISTRATORS—Continued.

Estimated effect of trans-Potomac fare proposals on cost of mass transportation to employees at Pentagon, Naval Annex, and Gravelly Point—Cont.

Total Net effect of lower and higher cost to riders:		
Grand total lower cost daily to riders	$800	
Grand total higher cost daily to riders	145	
Net grand total lower cost daily to riders		$655.00
Net grand total lower yearly cost to riders		196,500.00

F. W. LOVEJOY,
Executive Secretary.

APRIL 28, 1943.

2144 *Exhibit 106*

Arlington and Fairfax Motor Transportation Company, break-down of cost per mile, 1st six months, 1943

EXPENSES

Account number:		
4100	Equipment maintenance and garage expense	$0.0701
4200	Transportation expense	.1069
4400	Traffic, solicitation, and advertising expense	.0063
4500	Insurance and safety expense	.0118
4600	Administrative and general expense	.0264
5000	Depreciation expense	.0292
5200	Operating taxes and licenses	.0298
5300	Operating rents	.0039
7000	Interest on long-term obligations	.0053
	Total operating expense	.2837
8000	Provision for income tax	.0486
	Total cost per mile	.3323

2145 ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY

Trips through Pentagon and Navy Buildings on August 25, 1943, between hours designated

Time	Pentagon Building		Navy Building	
	Washington-bound	Virginia-bound	Washington-bound	Virginia-bound
A. M.				
5:00	0	0	0	0
6:00	2	1	2	1
7:00	1 M. B.		2 M. B.	2 M. B.
	7	5	7	4
8:00			2 M. B.	2 M. B.
	11	12	12	12
9:00	3 M. B.		4 M. B.	2 M. B.
	8	11	8	11
10:00			4 M. B.	3 M. B.
	6	8	6	8
11:00			2 M. B.	3 M. B.
	5	6	5	6
P. M.				
12:00			4 M. B.	3 M. B.
	6	6	6	6
1:00			1 M. B.	4 M. B.
	6	6	6	6
2:00			3 M. B.	3 M. B.
	6	6	6	6
3:00			3 M. B.	1 M. B.
	7	5	6	7
4:00			4 M. B.	3 M. B.
	11	7	7	6
5:00			1 M. B.	2 M. B.
	9	10	6	10
6:00			2 M. B.	5 M. B.
	14	8	8	9
7:00			2 M. B.	4 M. B.
	6	8	5	9
8:00			2 M. B.	3 M. B.
	7	6	5	6
9:00			1 M. B.	1 M. B.
	6	6	6	6
10:00			2 M. B.	2 M. B.
	6	6	6	6
11:00			1 M. B.	2 M. B.
	6	5	6	5
A. M.				
12:00			2 M. B.	2 M. B.
	6	6	5	5
1:00				2 M. B.
	4	6	2	6
2:00	1	0	1	1
3:00	1	0	0	1
4:00	0	0	0	0
5:00	0	0	0	0
	141	136	120	137
	4 M. B.	0 M. B.	42 M. B.	49 M. B.
	145	136	162	186

NOTE.—The initials M. B. mean via Memorial Bridge. No initials shows trip was via 14th Street Bridge.

2146 ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY

Trips through Pentagon and Navy Buildings on August 27, 1943, between hours designated

Time	Pentagon Building		Navy Building	
	Washington-bound	Virginia-bound	Washington-bound	Virginia-bound
A. M.				
5:00	0	0	0	0
6:00	2	1	1 M. B. 1	1 M. B. 1
7:00	1 M. B. 7	6	3 M. B. 7	1 M. B. 6
8:00	3 M. B. 7	7	5 M. B. 7	6 M. B. 7
9:00	1 M. B. 10	10	4 M. B. 10	4 M. B. 10
10:00	6	9	4 M. B. 6	3 M. B. 9
11:00	6	6	2 M. B. 6	4 M. B. 6
P. M.				
12:00	6	6	4 M. B. 6	2 M. B. 6
1:00	6	6	3 M. B. 6	4 M. B. 6
2:00	6	6	2 M. B. 6	1 M. B. 6
3:00	6	6	2 M. B. 6	3 M. B. 6
4:00	1 M. B. 9	6	5 M. B. 6	5 M. B. 6
5:00	8	8	1 M. B. 6	2 M. B. 9
6:00	14	6	2 M. B. 9	7 M. B. 9
7:00	7	7	2 M. B. 6	4 M. B. 8
8:00	6	6	2 M. B. 6	3 M. B. 6
9:00	6	6	1 M. B. 6	1 M. B. 6
10:00	6	6	2 M. B. 6	2 M. B. 6
11:00	6	6	1 M. B. 6	1 M. B. 6
A. M.				
12:00	7	5	2 M. B. 4	2 M. B. 5
1:00	5	4	2	3 M. B. 4
2:00	1	1	1	2 M. B. 0
3:00	1	1	0	1
4:00	0	0	0	0
5:00	0	0	0	0
	138 6 M. B.	125 0 M. B.	119 48 M. B.	128 61 M. B.
	144	125	167	189

NOTE.—The initials M. B. mean via Memorial Bridge. No initials shows trip was via 14th Street Bridge.

2147 *Exhibit 107*

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2508

FEBRUARY 23, 1943.

IN THE MATTER OF OPERATION OF BUSSES BY THE ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY WITHIN THE DISTRICT OF COLUMBIA

P. U. C. No. 2991

Canceling Order No. 2378

By the Commission: The completion of the grade separation structure at 14th Street and Maine Avenue Southwest, requires that the Arlington and Fairfax Motor Transportation Company be assigned a permanent routing within the District of Columbia.

It is the opinion of the Commission that the routes, stops, terminals, and other provisions of this order are in the public interest. Therefore, it is ordered that:

SECTION 1. Order No. 2378 be superseded and canceled by this order.

SECTION 2. The Arlington and Fairfax Motor Transportation Company be and it is hereby authorized and directed to operate bus service over the following routes within the District of Columbia:

Highway Bridge Routes

In-bound: From the District of Columbia Line, north on Highway Bridge and 14th Street to E Street Northwest, east on E Street and Pennsylvania Avenue to 12th Street, south on 12th Street to terminal south of Pennsylvania Avenue.

Out-bound: From terminal on 12th Street, south on 12th Street to Madison Drive, west on Madison Drive to 14th Street and Highway Bridge to the District of Columbia Line.

2148 Alternate Route

Over in-bound route to the intersection of 14th Street and Independence Avenue, east on Independence Avenue to 12th Street, south on 12th Street to C Street, west on C Street to 14th Street, south on 14th Street and over out-bound route.

Memorial Bridge Route

In-bound: From the District of Columbia Line, over the Arlington Memorial Bridge, Lincoln Memorial Circle and 23rd Street to Constitution Avenue, east on Constitution Avenue to 14th Street, north on 14th Street to E Street, east on E Street and Pennsylvania Avenue to 12th Street, south on 12th Street to terminal south of Pennsylvania Avenue.

Out-bound: From the terminal on 12th Street, south on 12th Street to Constitution Avenue, west on Constitution Avenue to 23rd Street, south on 23rd Street, Lincoln Memorial Circle and over the Arlington Memorial Bridge to the District of Columbia Line.

During such times as left turns are prohibited at 14th Street and Constitution Avenue, busses shall be operated in-bound on the Memorial Bridge Route as follows:

East on Constitution Avenue to 15th Street, south on 15th Street extended and Park Drive to Madison Drive extended, east on Madison Drive extended to 14th Street, north on 14th Street to Constitution Avenue, thence north on 14th Street over regular Memorial Bridge Route.

SECTION 3. A terminal be established on the west side of 12th Street Northwest, beginning 242 ft. south of the south curb of Pennsylvania Avenue and extending south 250 ft.

SECTION 4. The authority contained herein shall be applicable to the operation of Class B busses only, as defined in the Commission's Order No. 936.

2149 SECTION 5. The following stops and zones be established:

In-bound: On 14th Street Southwest.—Opposite the Jefferson Memorial, East side, south of C Street, East side, south of Adams Drive, 2-bus.

On 14th Street Northwest.—East side, 80 ft. south of south curb of driveway to Department of Labor underground parking garage.

On E Street Northwest.—South side, east of 13½ Street, 2-bus.

On 12th Street Northwest.—West side, at terminal south of Pennsylvania Avenue.

Out-bound: On 12th Street Northwest.—West side, south of Constitution Avenue.

On 14th Street Northwest.—West side, south of Madison Drive, 2-bus.

On 14th Street Southwest.—West side, north of D Street extended, in front of the Jefferson Memorial.

On Constitution Avenue Northwest.—North side, beginning 250 ft. west of west curb of 12th Street and extending west 154 ft.

North side, beginning 86 ft. west of west curb of 14th Street and extending west 138 ft.

SECTION 6. Busses shall not be stopped for the purpose of receiving passengers on in-bound trips or of discharging passengers on out-bound trips except at stops at the Jefferson Memorial.

SECTION 7. The fare for passengers using busses under the authorization contained in Section 6 hereof shall be ten cents (10¢) cash.

2150 SECTION 8. The Company shall file with the Commission a copy of all schedules in force in the District of Columbia, and shall notify the Commission at least forty-eight (48) hours in advance of any change in schedules.

SECTION 9. Busses operated on these lines shall not deviate from the routes hereinbefore described, except when required by street work, fire, or other emergency. Where deviation is necessary, busses shall be operated over such routes as may be directed by detour signs, police instructions, or orders of the Commission.

SECTION 10. This order became effective Thursday, February 25, 1943.

By the Commission:

E. J. MILLIGAN,
Executive Secretary.

A true copy:
[SEAL]

(S) N. H. HETZEL,
Chief Clerk.

FEBRUARY 24, 1943.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ,
Chairman of the Joint Board.

AD.

2151 *Exhibit 108*

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2507

FEBRUARY 23, 1943.

IN THE MATTER OF OPERATION OF BUSSES BY THE ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY WITHIN THE DISTRICT OF COLUMBIA

P. U. C. No. 209, 2

Canceling Orders Nos. 2377 and 2436

By the Commission: The completion of the grade separation structure at 14th Street and Maine Avenue Southwest requires that the Alexandria, Barcroft and Washington Transit Company be assigned a permanent routing within the District of Columbia.

It is the opinion of the Commission that the routes, stops, terminals, and other provisions of this order are in the public interest. Therefore, it is ordered that:

SECTION 1. Orders Nos. 2377 and 2436 be superseded and canceled by this order.

SECTION 2. The Alexandria, Barcroft and Washington Transit Company be and it is hereby authorized and directed to operate bus service over the following routes within the District of Columbia:

Highway Bridge Route

In-bound: From the District of Columbia Line, north on Highway Bridge and 14th Street to Independence Avenue, east on Independence Avenue to 12th Street, north on 12th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to terminal.

Out-bound: From terminal on Pennsylvania Avenue, east on Pennsylvania Avenue to 10th Street, south on 10th Street to Constitution Avenue, west on Constitution Avenue to 12th Street, south on 12th Street to C Street Southwest, west on C Street to 14th Street, south on 14th Street and Highway Bridge to the District of Columbia Line.

2152 Memorial Bridge Route

In-bound: From the District of Columbia Line, over the Arlington Memorial Bridge, Lincoln Memorial Circle and 23rd Street to Constitution Avenue, east on Constitution Avenue to 12th

Street, north on 12th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to terminal.

Out-bound: From terminal on Pennsylvania Avenue, east on Pennsylvania Avenue to 10th Street, south on 10th Street to Constitution Avenue, west on Constitution Avenue to 23rd Street, south on 23rd Street, Lincoln Memorial Circle and over the Arlington Memorial Bridge to the District of Columbia Line.

Rush-Hour Routes

A. M. Rush Hour: Over the in-bound Memorial Bridge Route to the intersection of 14th Street and Constitution Avenue, south on 14th Street to C Street, thence over the out-bound Highway Bridge Route.

P. M. Rush Hour: Over the in-bound Memorial Bridge Route to the intersection of 12th Street and Constitution Avenue, south on 12th Street and over the out-bound Highway Bridge Route.

SECTION 3. The following terminals be established:

East side of 12th Street Northwest, beginning at the south curb of D Street and extending south, 146 ft. Beginning again 193 ft. south of the south curb of D Street and extending south 120 ft.

South side of Pennsylvania Avenue Northwest, in front of the Old Post Office Building, east of 12th Street, as per plan of the District of Columbia Highway Department.

West side of 10th Street Northwest, beginning 104 ft. south of the south curb of Pennsylvania Avenue and extending south 138 ft.

2153 SECTION 4. The authority contained herein shall be applicable to the operation of Class B busses only, as defined in the Commission's Order No. 936.

SECTION 5. The following stops and zones be established:

In-bound: On 14th Street Southwest.—Opposite the Jefferson Memorial, East side, south of C Street.

On Independence Avenue Southwest.—South side, bus zone extending 310 ft. east of the east curb of 14th Street.

On 12th Street Northwest.—East side, south of Jefferson Drive, 2-bus. East side, north of Constitution Avenue, 2-bus.

On Constitution Avenue.—South side, beginning 96 ft. east of east curb of 14th Street and extending east 138 ft.

Terminal

Out-bound: On 12th Street Northwest.—West side, south of Constitution Avenue, West side, north of Jefferson Drive, 2-bus.

On C Street Southwest.—North side, east of west curb of 13th Street extended, 2-bus.

On 14th Street Southwest.—West side, north of D Street extended, in front of the Jefferson Memorial.

On Constitution Avenue.—North side, beginning 250 ft. west of west curb of 12th Street and extending west 154 ft. North side, beginning 86 ft. west of west curb of 14th Street and extending west 138 ft.

2154 SECTION 6. Busses shall not be stopped for the purpose of receiving passengers on in-bound trips or of discharging passengers on out-bound trips, except at the stops at the Jefferson Memorial.

SECTION 7. The fare for passengers using busses under the authorization contained in Section 6 hereof shall be ten cents (10¢) cash.

SECTION 8. The Company shall file with the Commission a copy of all schedules in force in the District of Columbia, and shall notify the Commission at least forty-eight (48) hours in advance of any change in schedules.

SECTION 9. Busses operated on these lines shall not deviate from the routes hereinbefore described, except when required by street work, fire, or other emergency. Where deviation is necessary, busses shall be operated over such routes as may be directed by detour signs, police instructions or orders of the Commission.

SECTION 10. This order become effective Thursday, February 25, 1943.

By the Commission:

A true copy:

E. J. MILLIGAN,
Executive Secretary.

[SEAL] (S) N. H. HETZEL,
Chief Clerk.

FEBRUARY 24, 1943.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ,
Chairman of the Joint Board.

AD.

2155 *Exhibit 109*

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2428

NOVEMBER 20, 1942.

P. U. C. No. 2731

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., WITHIN THE DISTRICT OF COLUMBIA

Amending Order No. 1881

By the Commission: The shortage of additional transportation equipment has made it imperative that steps be taken to obtain maximum use of existing equipment. Busses of the Washington, Virginia and Maryland Coach Company, Inc., are available for use in counterflow service between the District of Columbia and the United States Government Pentagon Building in Arlington County, Virginia, during rush hours. The Commission is informed that the Interstate Commerce Commission will simultaneously, herewith in Order No. MC 68167 Sub. 10 TA, authorize the Washington, Virginia and Maryland Coach Company, Inc., to engage in interstate operation between the Pentagon Building in Arlington County, Virginia, and the District of Columbia. The utilization of these busses in this service will reduce the demand upon other bus lines engaged in similar operation. The Commission is of the opinion that the establishment of this service is in the public interest, it is ordered:

SECTION 1. That Section 2 of Order No. 1881 be and it hereby is amended by the addition of the following routes:

A. M. Rush Hour—6:30 A. M. to 9:30 A. M.

Highway Bridge Route.—From the intersection of 10th and E Streets Northwest, south on 10th Street to Constitution Avenue, west on Constitution Avenue to 12th Street, south on 12th Street to Independence Avenue, west on Independence Avenue to 15th Street, south on 15th Street to East Basin Drive, east on East Basin Drive to United States Route No. 1, south on United States Route No. 1 over Highway Bridge to the District of Columbia Line.

2156 Memorial Bridge Route.—From the intersection of 10th and E Streets Northwest, south on 10th Street to Constitu-

tion Avenue, west on Constitution Avenue to 23rd Street, south on 23rd Street, Memorial Circle and over Memorial Bridge to the District of Columbia Line.

Service on these routes is limited to the receipt of passengers at authorized stops and transfer points.

P. M. Rush Hour—3:30 P. M. to 7:00 P. M.

Highway Bridge Route.—From the District of Columbia Line north on United States Route No. 1 over Highway Bridge to East Basin Drive, west on East Basin Drive to 15th Street, north on 15th Street to Independence Avenue, east on Independence Avenue to 12th Street, north on 12th Street to Constitution Avenue, east on Constitution Avenue to 10th Street, north on 10th Street to Pennsylvania Avenue, west on Pennsylvania Avenue to 11th Street, north on 11th Street to terminal.

Memorial Bridge Route.—From the District of Columbia Line northly on Memorial Bridge, Memorial Circle and 23rd Street to Constitution Avenue, east on Constitution Avenue to 10th Street, north on 10th Street to Pennsylvania Avenue, west on Pennsylvania Avenue to 11th Street, north on 11th Street to terminal.

Service on these routes is limited to the discharge of passengers at authorized stops and transfer points.

SECTION 2. That this order become effective Tuesday, November 24, 1942.

By the Commission:

A true copy.

E. J. MILLIGAN,
Executive Secretary.

[SEAL] (S) N. H. HETZEL,
Chief Clerk.

NOVEMBER 23, 1942.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ,
Chairman of the Joint Board.

AD.

2157 PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2686

NOVEMBER 12, 1943.

P. U. C. No. 2731

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., WITHIN THE DISTRICT OF COLUMBIA

Amending Order No. 1881

The Director of the Office of Defense Transportation, by Special Order ODT LB-14, directed the suspension of certain bus operation of the Washington, Virginia and Maryland Coach Company, Inc., and the Commission is of the opinion that the cutting back of a portion of the busses of this Company at 15th Street (west) and K Street Northwest, will save bus mileage and be in the interest of our national conservation program, it is therefore ordered that:

SECTION 1. Section 2 of Order No. 1881 be amended by the addition of the following paragraph: Part of the busses operating via K Street Northwest, be operated over south roadway of K Street from 16th Street to 15th Street (west), south on 15th Street, west on I Street, north on 17th Street (east) and thence over regular westbound route via K Street.

SECTION 2. Section 4 of Order No. 1881 be amended by the addition of the following terminal stand: South side of south roadway of K Street Northwest, beginning 40 feet west of west curb line of 15th Street (west) and extending west 51 feet; beginning again 141 feet west of west curb of 15th Street (west) and extending west 60 feet.

SECTION 3. This order take effect immediately.

By the Commission:

E. J. MILLIGAN,
Executive Secretary.

A truly copy:
[SEAL]

(S) N. H. HELZEL,
Chief Clerk.

NOVEMBER 17, 1943.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ,
Chairman of the Joint Board.

2158 PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2509

P. U. C. No. 2731

FEBRUARY 23, 1943.

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., WITHIN THE DISTRICT OF COLUMBIA

Amending Order No. 2428

By the Commission: The completion of the grade separation structure at 14th Street and Maine Avenue Southwest, requires that changes be made in the "Highway Bridge Route" of the Washington, Virginia and Maryland Coach Company, Inc., as described in Order No. 2428.

It is the opinion of the Commission that these changes are in the public interest. Therefore, it is ordered that:

SECTION 1. Section 1 of Order No. 2428 be amended as follows:

Substitute the following Highway Bridge Route for the route under the caption A. M. Rush Hour—6:30 A. M. to 9:30 A. M.

Highway Bridge Route

From the intersection of 10th and E Streets Northwest, south on 10th Street to Constitution Avenue, west on Constitution Avenue to 12th Street, south on 12th Street to C Street Southwest, west on C Street to 14th Street, south on 14th Street and Highway Bridge to the District of Columbia Line.

Substitute the following Highway Bridge Route for the route under the caption P. M. Rush Hour—3:30 P. M. to 7:00 P. M.

Highway Bridge Roue

From the District of Columbia Line, north on Highway Bridge and 14th Street to Independence Avenue, east on Inde-
2159 pendence Avenue to 12th Street, north on 12th Street to Constitution Avenue, east on Constitution Avenue to 10th Street, north on 10th Street to Pennsylvania Avenue, west on Pennsylvania Avenue to 11th Street, north on 11th Street to terminal.

SECTION 2. This order become effective Thursday, February 25, 1943.

By the Commission:

E. J. MILLIGAN,
Executive Secretary.

A true copy:
[SEAL] (S) N. H. HETZEL,
Chief Clerk.

FEBRUARY 24, 1943.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board,

C. W. KUTZ,
Chairman of the Joint Board.

AD.

2160 PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2153

JANUARY 14, 1942.

P. U. C. No. 2731

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. WITHIN THE DISTRICT OF COLUMBIA

Amending Order No. 1881

By the Commission: The Commission has been advised by the management of the Washington, Virginia and Maryland Coach Company, Inc. of the urgent necessity for an increase in the number of busses on their Chain Bridge-Key Bridge Routes because of the increased patronage on those routes, it is ordered that:

SECTION 1. Section 2 of Order No. 1881, insofar as it applies to the Chain Bridge-Key Bridge Routes, be amended to read as follows:

Chain Bridge-Key Bridge Routes

Five in-bound busses may be operated during the morning rush period over the Key Bridge route to Washington Circle, thence over the Chain Bridge route to the terminal; and five out-bound busses may be operated during the afternoon rush period over the Chain Bridge route to Key Bridge, thence over Key Bridge.

SECTION 2. This order take effect immediately.
By the Commission:

E. J. MILLIGAN,
Executive Secretary.

A true copy:
[SEAL]

(S) N. H. HETZEL, *Chief Clerk.*

JANUARY 28, 1942.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ.
Chairman of the Joint Board.

2161 PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 2197

MARCH 3, 1942.

P. U. C. No. 2731

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC., WITHIN THE DISTRICT OF COLUMBIA

Amending Order No. 1881 and Vacating Order No. 2071

By the Commission: By letter dated February 27, 1942, the Washington, Virginia and Maryland Coach Company, Inc., requested authority to operate regular route service over the alternate rush hour route established by Order No. 2071, to serve the increasing population requiring transportation into the District of Columbia as well as the increasing number of Federal employees being located in Federal buildings in Arlington County. The Commission believes that public convenience and necessity require a regular routed service over the alternate rush hour route established by Order No. 2071. This requires a change in the terminal stand established by the Public Utilities Commission and Joint Board letter dated July 8, 1941, which will be included in this order, it is, therefore, ordered:

SECTION 1. That Section 2 of Order No. 1881 be and it hereby is amended by the addition of the following alternate route:

In-bound: Over the Arlington Memorial Bridge, Lincoln Memorial Circle and Bacon Drive to Constitution Avenue, east on Constitution Avenue to 10th Street, north on 10th Street to Pennsylvania Avenue, east on Pennsylvania Avenue to 9th Street, south on 9th Street to terminal.

Out-bound: From terminal on 9th Street north of Constitution Avenue, south on 9th Street to Constitution Avenue, west on Constitution Avenue to Bacon Drive, south on Bacon Drive, Lincoln Memorial Circle and Arlington Memorial Bridge.

2162 SECTION 2. That the following terminal stand for use of busses on the route be established as follows: West side of 9th Street Northwest, beginning 90 ft. north of Constitution Avenue, and extending north 90 ft.

SECTION 3. That Order No. 2071 be vacated.

SECTION 4. That this order take effect immediately.

By the Commission:

N. H. HETZEL,
Acting Executive Secretary.

A true copy:
[SEAL] (S) N. H. HETZEL,
Chief Clerk.

MARCH 20, 1942.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

C. W. KUTZ,
Chairman of the Joint Board.

AD.

2163 PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 1881.

APRIL 29, 1940.

P. U. C. No. 2751

IN THE MATTER OF OPERATION OF BUSSES BY THE WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. WITHIN THE DISTRICT OF COLUMBIA

By the Commission: For a number of years the principal route of the Washington, Virginia and Maryland Coach Company, Inc. in the downtown area of the District of Columbia has been along 11th and 12th Streets, with a terminal on the east side of 12th Street between F and G Streets. With a view to relieving to some extent traffic congestion on 12th Street, a route via K, 10th, E and 11th Streets, with terminal on the east side of 11th Street between E and F Streets, was presented. The Commission is informed that the proposed route was endorsed by the Coordinating Committee of the District Government and by the company. It is the

opinion of the Commission that the routes, terminals and stops approved by this order will be in the public interest. Existing orders relating to the Washington, Virginia and Maryland Coach Company, Inc. will be canceled and superseded by this order, it is ordered:

SECTION 1. That Orders Nos. 1161, 1324, 1579, 1677, 1756, and 1764 be and they are rescinded and superseded by this order.

SECTION 2. That the Washington, Virginia and Maryland Coach Company, Inc. be and it is authorized to operate buses over the following routes within the District of Columbia:

Chain Bridge Routes

In-bound: Across Chain Bridge to Canal Road, east on Canal Road, M Street, Pennsylvania Avenue, Washington Circle and Pennsylvania Avenue to 15th Street, south on 15th Street to Pennsylvania Avenue, east on Pennsylvania Avenue, to 11th Street, north on 11th Street to terminal between E and F Streets.

Out-bound: From terminal, north on 11th Street to H Street, east on H Street to 10th Street, south on 10th Street to Pennsylvania Avenue, west on Pennsylvania Avenue and Treasury Place to East Executive Avenue, north on East Executive Avenue to Pennsylvania Avenue, west on Pennsylvania Avenue, Washington Circle, Pennsylvania Avenue, M Street and Canal Road to Chain Bridge, across Chain Bridge.

2164

Key Bridge Routes

In-bound: North on Key Bridge to M Street, east on M Street, Pennsylvania Avenue, Washington Circle and K Street to 10th Street, south on 10th Street to E Street, west on E Street to 11th Street, north on 11th Street to terminal between E and F Streets.

Out-bound: North on 11th Street to K Street, west on K Street, Washington Circle, Pennsylvania Avenue and M Street to Key Bridge, south on Key Bridge.

Chain Bridge-Key Bridge Routes

Two in-bound buses may be operated during the morning rush period over the Key Bridge route to Washington Circle, thence over the Chain Bridge route to the terminal; and two out-bound buses may be operated during the afternoon rush period over the Chain Bridge route to Key Bridge, thence over Key Bridge.

Georgetown Loop

North on Key Bridge to M Street, east on M Street to 33rd Street, north on 33rd Street to Prospect Avenue, east on Prospect

Avenue to Potomac Street, south on Potomac Street to M Street, west on M Street to Key Bridge, south on Key Bridge.

SECTION 3. That the authority herein contained shall be applicable to the operation of Class B service only, as defined in Order No. 936, and that no intra-District passengers shall be carried on buses of the company.

SECTION 4. That the following terminal stands be established:

East side of 11th Street Northwest, beginning 115 ft. south of south curb line of F Street and extending south 71 ft. (10 ft. north of fire hydrant), beginning again 206 ft. south of south curb line of F Street (10 ft. south of fire hydrant), and extending south 141 ft.

West side of Potomac Street Northwest, beginning 74 ft. north of north curb line of M Street (5 ft. north of watering trough), and extending north 66 ft. (between 3:00 and 6:00 p. m., Monday to Friday).

2165 SECTION 5. That the following stops be and they are established:

East-bound

On east side of Key Bridge approach, south of M Street.

On south side of M Street.—In front of car barn west of Wisconsin Avenue. West of Jefferson Street.

On south side of Pennsylvania Avenue.—East of 29th Street. East of 25th Street.

On south side of K Street.—East of 22nd Street. West of 21st Street. West of 20th Street. West of 19th Street. West of 18th Street. West of west 17th Street. West of east 17th Street. West of 16th Street. West of west 15th Street. West of 14th Street. West of 13th Street. West of 12th Street. West of 10th Street.

On the west side of 10th Street.—North of I Street. North of H Street. North of G Street. North of E Street.

At terminal.

West-bound

On east side of 11th Street.—South of H Street. South of I Street. North of New York Avenue.

On north side of K Street.—West of 11th Street. East of
2166 13th Street. East of 14th Street. East of Vermont Avenue. East of west 15th Street. East of 16th Street. East of 17th Street. West of Connecticut Avenue. East of 18th Street. East of 19th Street. East of 20th Street. East of 21st Street. East of 22nd Street.

On north side of Pennsylvania Avenue.—West of 24th Street. East of 26th Street. East of 28th Street.

On north side of M Street.—West of Jefferson Street. West of Wisconsin Avenue. West of 34th Street.

SECTION 6. That buses shall not deviate from the established routes except when required by street work, fire or other emergency. When deviation is necessary, buses shall be operated over such routes as may be directed by detour signs, police instructions, or orders from the Commission.

SECTION 7. That this order take effect Sunday, May 19, 1940.

By the Commission:

JAMES L. MARTIN,
Executive Secretary.

A true copy:

[SEAL] (s) N. H. HETZEL,
Executive Secretary.

MAY 3, 1940.

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

D. McCOACH, Jr.,
Chairman of the Joint Board.

JLM: M.

2167 In the Supreme Court of the United States

Statement of points intended to be relied upon by appellants

Filed Nov. 11, 1944

Appellants in the above-entitled case, both in brief and oral argument, will rely upon the points set forth in their assignment of errors filed September 20, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
WENDELL BERGE,
per R. L. P.
Wendell Berge,
Assistant Attorney General,
ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

2168 In the Supreme Court of the United States

Designation of record by appellants

Filed Nov. 11, 1944

To the Capital Transit Company, Alexandria, Barcroft and Washington Transit Company, Arlington and Fairfax Motor Transportation Company, Washington, Virginia & Maryland Coach Company, Inc., State Corporation Commission of the State of Virginia, or their counsel:

Please take notice that pursuant to the rules of court in such cases made and provided, the United States of America and the Interstate Commerce Commission, appellants in the above-entitled case, designate to be printed as necessary for the consideration of their appeal, all the record in this case heretofore docketed with this Court, with the following exceptions:

1. Petitions of Capital Transit Company, Arlington and Fairfax Motor Transportation Co., and Washington, Virginia and Maryland Coach Co., Inc., for reconsideration, filed with the Interstate Commerce Commission on February 9, 1944.

2. Petition for reconsideration of Virginia State Corporation Commission, filed with the Interstate Commerce Commission on February 14, 1944.

3. Exhibits B and C to complaint before the District Court in No. 23420, filed March 11, 1944, being petition for reconsideration to the Interstate Commerce Commission, and order of Commission denying the same on February 14, 1944.

2169 4. All exhibits to complaints before the District Court in Nos. 23421–23423, filed March 11, 1944, being respectively an order of the Commission of July 3, 1943, instituting investigation, report and order of January 18, 1944, both of which are printed elsewhere, and various petitions for reconsideration and orders of the Commission denying same.

5. Motion for preliminary injunction in No. 23420 and notice of motion.

6. Motion for preliminary injunction in No. 23421, notice of motion, and memorandum of points and authorities.

7. Notice of hearing on interlocutory injunction in No. 23422.

8. Motion for interlocutory injunction in No. 23423, memorandum of points and authorities, and notice of motion.

9. Petition of Chester Bowles, Administrator of the Office of Price Administration, to file brief amicus curiae.

10. Order consolidating causes filed March 20, 1944.

11. Certificates of service of answers of United States in Nos. 23420 through 23423 and to petition of intervenor in No. 23420.

12. Notice of motion by plaintiffs to amend language of order entered May 15, 1944, and Exhibits A and B to said motion, being orders of the Commission of May 8 and May 15, 1944 (which exhibits are printed elsewhere), all filed June 29, 1944.

13. Affidavit of Raymond Sparks, concerning attached record of Interstate Commerce Commission in supplemental proceedings in Docket No. 28991.

14. Exhibit A to the answer of Interstate Commerce Commission in opposition to motion of plaintiffs to amend court's order entered May 15, 1944, filed July 5, 1944, being the Commission's report and order of June 12, 1944, which are printed elsewhere.

15. Notice of motion of United States for new trial, points and authorities in support of motion, and certificate of service, filed July 5, 1944, but not motion for new trial.

16. Stipulation regarding change in composition of court, filed July 6, 1944.

17. Order substituting Justice Arnold for Justice Miller, filed July 10, 1944.

2170 18. Citation, filed September 25, 1944.

19. Jurisdictional statement, filed September 25, 1944; the same however, to be printed separately under Rule 12, Paragraph 5.

20. Notice of appeal to Commissioners of the District of Columbia, filed September 25, 1944.

21. Statement by defendants directing attention to Paragraph 3 of Rule 12 of the Supreme Court Rules, filed September 25, 1944.

22. Notice of appeal, filed September 25, 1944.

23. Order allowing use of original record, filed September 25, 1944.

24. Proof of service of appeal papers, filed September 25, 1944.

25. Praecipe, filed September 25, 1944.

26. Order extending time for docketing record on appeal.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
WENDELL BERGE, per R. C. P.
Wendell Berge,
Assistant Attorney General,
ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

2171 5 CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the attached statement of points intended to be relied upon by appellants, and designation of record by appellants upon each of the following counsel this 10 day of November 1944 by mailing them a copy thereof: E. Barrett Prettyman, Esquire, F. G. Awalt, Esquire, Raymond Sparks, Esquire, 822 Connecticut Avenue, Washington, D. C. Hugh H. Obear, Esquire, Franklin K. Lane, Esquire, 822 Southern Building, Washington, D. C. J. Ninian Beall, Esquire, 316 Investment Building, Washington, D. C. Robert E. Quirk, Esquire, 1116 Investment Building, Washington, D. C. H. E. Ketner, Esquire, Frederick G. Hamley, Esquire, 7413 New Post Office Building, ICC Section, Washington, D. C.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General.

2172 In the Supreme Court of the United States

Counterdesignation of record by Appellee Arlington and Fairfax Motor Transportation Company

Filed Nov. 17, 1944

To the United States of America and Interstate Commerce Commission, Appellants, or their counsel:

Please take notice that pursuant to the rules of court in such cases made and provided the Arlington and Fairfax Motor Transportation Company, one of the appellees in the above-entitled case, hereby designates to be printed as necessary for the consideration of this case on appeal the following matter omitted from printing by the appellants:

1. Petition of Arlington and Fairfax Motor Transportation Company for reconsideration filed with the Interstate Commerce Commission on February 9, 1944.

2. Petition for reconsideration of Virginia State Corporation Commission filed with the Interstate Commerce Commission on February 24, 1944.

2173 3. Exhibit #107, being order #2508 of the Public Utilities Commission of the District of Columbia dated February 23, 1943, in the matter of operation of busses by the Arlington

and Fairfax Motor Transportation Company within the District of Columbia (PUC #2991).

F. K. LANE,
Franklin K. Lane, Jr.,
HUGH H. OBEAR,
Hugh H. Obear,
Attorneys for Appellee Arlington and Fairfax Motor Transportation Company.

2174 Supreme Court of the United States

Order noting probable jurisdiction

December 11, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

2175 In the Supreme Court of the United States

Stipulation as to printing the record

Filed Jan. 26, 1945

It is hereby stipulated that the following exhibits, constituting a portion of the record before the Interstate Commerce Commission, and which had been introduced in the District Court, shall be printed as a part of the record in this case:

Exhibit No. 2, Exhibit No. 4, Exhibit No. 11, Exhibit No. 12, Exhibit No. 13, Exhibit No. 14, Exhibit No. 15, Exhibit No. 16a, Exhibit No. 17, Exhibit No. 18, Exhibit No. 19, Exhibit No. 20, Exhibit No. 21, Exhibit No. 22, Exhibit No. 23, Exhibit No. 24, Exhibit No. 25, Exhibit No. 26, Exhibit No. 27, Exhibit No. 28, Exhibit No. 29, Exhibit No. 30, Exhibit No. 31, Exhibit No. 32, Exhibit No. 33, Exhibit No. 34, Exhibit No. 35, Exhibit No. 36, Exhibit No. 37, Exhibit No. 38, Exhibit No. 43, Exhibit No. 44, Exhibit No. 45, Exhibit No. 55, Exhibit No. 56, Exhibit No. 57, Exhibit No. 58, Exhibit No. 59, Exhibit No. 60, Exhibit No. 65, Exhibit No. 66, Exhibit No. 72, Exhibit No. 89, Exhibit 90, Exhibit No. 91 (may be reduced in size), Exhibit No. 98, Exhibit No. 99 (including only the cover, the foreword, and pages 8, 11, 13, 14), Exhibit No. 100 (including only cover, foreword, and pages 7, 10, 11, 12, 13), Exhibit No. 101, Exhibit No. 102, Exhibit No. 103, Exhibit No. 104, Exhibit No. 105, Exhibit No. 106, Exhibit No. 107, Exhibit No. 108, Exhibit No. 109.

The remainder of the exhibits, not listed in the foregoing enumeration, need not be printed as a part of the record
2176 in this case, but any party can make reference thereto in brief or in oral argument the same as if said exhibits had been printed in full.

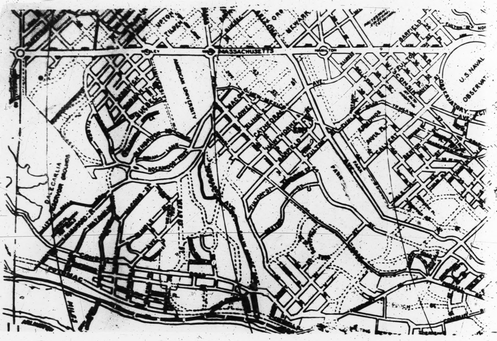
CHARLES FAHY,
Solicitor General for the United States.
DANIEL W. KNOWLTON,
Chief Counsel,
For the Interstate Commerce Commission.
E. BARRETT PRETTYMAN,
822 Connecticut Ave. NW., Washington, D. C.,
Attorney for Capital Transit Co.
HUGH H. OBEAR,
Attorney for Arlington and Fairfax
Motor Transportation Company,
822 Southern Bldg., Washington, D. C.
J. NINIAN BEALL,
Attorney for Washington, Maryland
and Virginia Coach Co.,
1116 Investment Bldg., Washington, D. C.
ROBERT E. QUIRK,
Attorney for Alexandria, Barcroft
& Washington Transit Co.,
1116 Investment Bldg., Washington, D. C.
H. E. KETNER,
FREDERICK G. HAMLEY,
Attorneys for State Corporation
Commission of Virginia,
7413 Post Office Bldg., Washington, D. C.

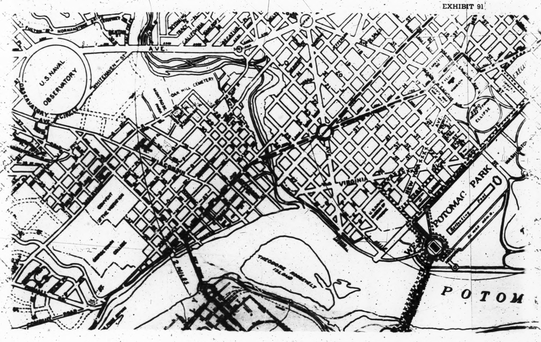
[Endorsement on cover:] File No. 49116. D. C. U. S., District of Columbia. Term No. 663. The United States of America and Interstate Commerce Commission, Appellants vs. Capital Transit Company, Alexandria, Barcroft and Washington Transit Company, Arlington and Fairfax Motor Transportation Company, et al. Filed November 9, 1944. Term No. 663 O. T. 1944.

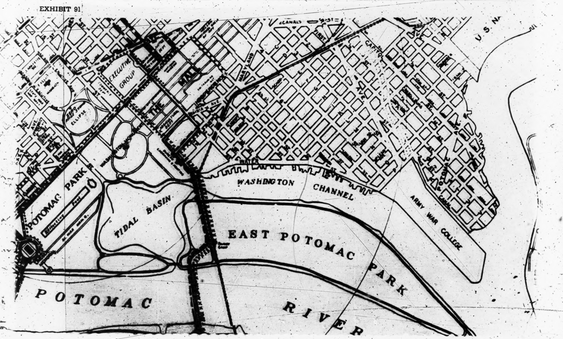
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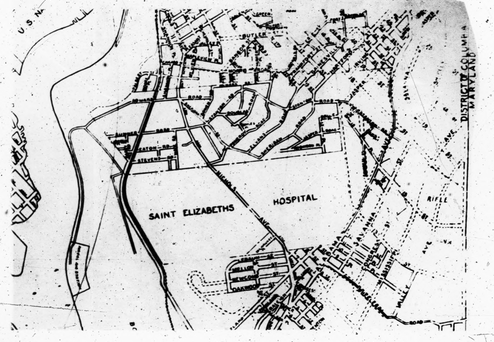
EXHIBIT 91

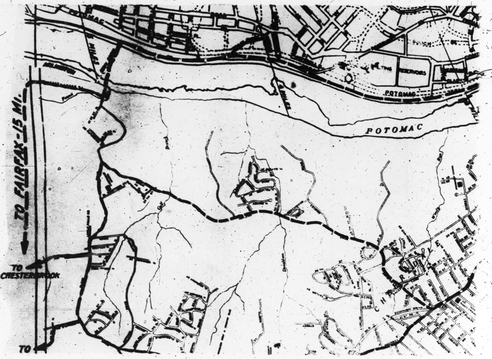
EXHIBIT 91

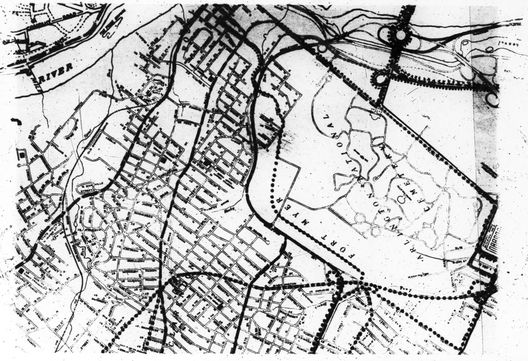


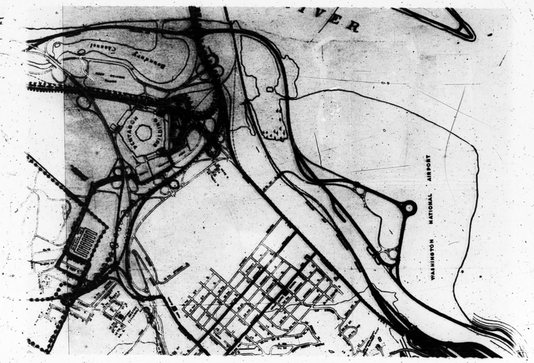


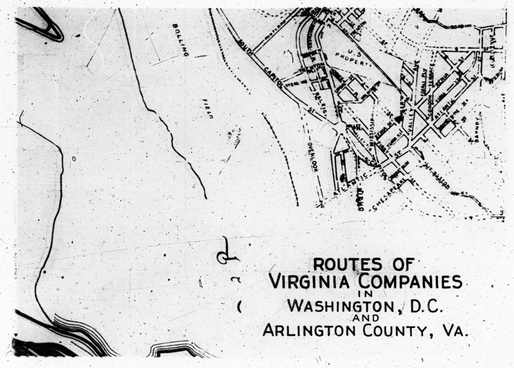




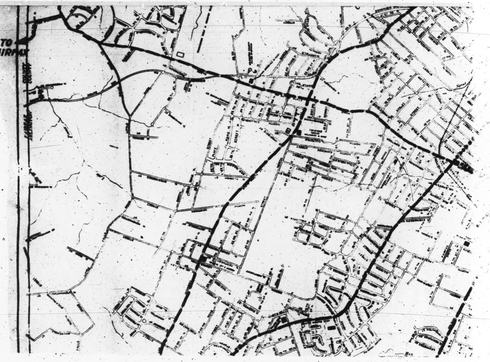


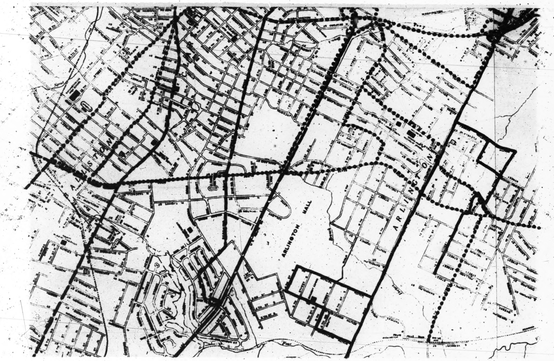


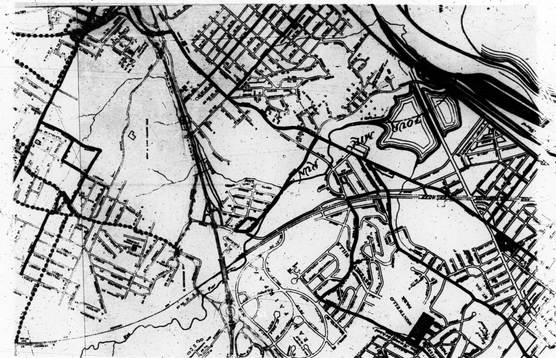




ROUTES OF VIRGINIA COMPANIES IN WASHINGTON, D.C. AND ARLINGTON COUNTY, VA.









In the District Court of the United States for the District of Columbia

CIVIL ACTION NO. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF, AND ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, INTERVENING PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

619114—44——1

JURISDICTIONAL STATEMENT BY THE DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. *Statutory Provisions*

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339,

sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. *Date of the Judgment or Decree Sought to be Reviewed and the Date upon which the Application for Appeal was Presented*

Te decree sought to be reviewed was entered on September 20, 1944. The petition for appeal was presented and allowed on the same day, and an assignment of errors filed.

C. *Nature of Cause and of Rulings Below*

This is an appeal from a final decree of the District Court of the United States for the District of Columbia, entered September 20, 1944, setting aside and permanently enjoining an order of the Interstate Commerce Commission of June 12, 1944, made in connection with a supplemental report of the same date issued upon rehearing and reconsideration in a proceeding known as No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia.*

The Commission proceeding was an investigation which, at the request of the Secretary of War, concurred in by the Secretary of the Navy, the Commission, by order of July 3, 1943, instituted into the reasonableness and the lawfulness

otherwise of the fares of the carriers involved[1] for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point and the Washington National Air Port, on the other hand. Following hearings held in Washington, D. C., on three days in August and four days in September, 1943, the Commission, on January 18, 1944, made and entered its original report and order by which it found the existing fares for the transportation involved to be unreasonable and prescribed the reasonable fares to be observed for the future. Thereafter, actions to set aside the order were instituted by the carriers involved and the State Corporation Commission of Virginia in the District Court of the United States for the District of Columbia. The actions were consolidated for hearing and were disposed of in one opinion and by one decree, which latter was entered on May 15, 1944. By the decree, the Commission's order of January 18, 1944, was enjoined and set aside, solely on the ground that

[1] The Capital Transit Co., the Alexandria, Barcroft and Washington Transit Co., the Arlington and Fairfax Motor Transportation Co., and the Washington, Virginia & Maryland Coach Co., hereinafter referred to as the Transit Company, the Alexandria Line, the Arlington Line and the Coach Company.

the Commission did not have jurisdiction over this transportation, the Court thus not being required to consider numerous other contentions made by plaintiffs, on the merits, as to the invalidity of the prescribed rates. The court's decision deals only with the provisions of the so-called "commercial zone exemption" contained in section 203 (b), (7a) and (8) of Part II of the Interstate Commerce Act, which provisions read in part as follows:

> Nothing in this part * * * shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs * * *; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft *nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act,* shall the provisions of this part * * * apply to; (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities * * * *provided that* the motor carrier engaged in such transportation of passenger over regular or irregular route or routes in interstate commerce *is also law-*

fully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *. [Italics supplied.]

In its original report, the Commission, dealing first with subdivision (8) of the above and thereafter with subdivision (7a), had said and found (256 I. C. C. 769, 777) that:

> As to the Transit Company and the Coach Company there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration.

The District Court, in enjoining the Commission's order of January 18, 1944, held that the Commission had not made the findings necessary to support its conclusion that application of the provisions of the Act was necessary to carry out the national transportation policy; and it also

held that, except as such application of the Act might be necessary to carry out the said policy, the transportation involved was exempted by subdivision (8), the Court holding in this connection that the Transit Company and other carriers were "also lawfully engaged in the intrastate transportation of passengers over the entire length of" their interstate routes.

Responding to the Court's holding of inadequacy of findings in its report to support its conclusion that application of the Act to the transportation was necessary to carry out the national transportation policy, the Commission reopened its proceeding for further consideration and hearing. And, since the question as to the applicability of the exemption provision was closely related, the reopening was made to include that question. The further hearing was limited to the matters passed upon by the Court but the reconsideration provided for was unrestricted.

At the further hearing, counsel for the Transit Company and other carriers appeared specially and filed motions to discontinue the proceeding on the ground that the matters placed in issue were *res judicata* by reason of the District Court's holdings above referred to, including its holding of inadequacy of findings by the Commission to support its taking of jurisdiction as necessary to carry out the national transportation policy. As to the latter holding, the position of counsel for the carriers was that, since that holding was legal,

the Commission was foreclosed from reopening its proceeding and the only proper course was to take an appeal to the Supreme Court. The presiding Commissioner overruled the motions only so far as necessary to enable the hearing to proceed, and they were subsequently passed upon and overruled by the Commission upon grounds fully stated in its supplemental report.

At the further hearings, the carriers and the Virginia Commission offered no evidence but their counsel cross examined witnesses appearing in behalf of the Departments and the Commission's Bureau of Inquiry. In its supplemental report, issued June 12, 1944, the Commission dealt specifically with the matters involved in the Court's opinion and which were in issue for the taking of further evidence. It discussed at length and made subordinate findings in support of its conclusion that its taking of jurisdiction over the transportation involved was necessary to carry out the national transportation policy. In addition, it discussed at length the facts showing the extent to which the carriers were engaged in the intrastate transportation of passengers over their interstate routes and concluded that none of them was so engaged "over the entire length" of its interstate route, or routes, in question, and, accordingly, that the transportation involved was not excepted from the Act by the exemption provisions of section 203 (b) (8). It also concluded

that the prescribed fares were not commutation fares, and that in any event it had power to compel their adoption, thus rejecting the contentions to the contrary urged by the carriers in the District Court but not passed upon by the court. In all other respects the Commission affirmed the findings and conclusions adopted in its prior report. Pursuant to the said findings and conclusions, as reconsidered and reaffirmed, the Commission, by its order of June 12, 1944, which accompanied its supplemental report, prescribed for the transportation involved fares the same in level and other respects as those prescribed by its prior order of January 18, 1944.

Thereafter, the carriers and the Virginia Commission filed with the District Court a motion which asked with respect to the Court's decree of May 15, 1944, enjoining the Commission's prior order of January 18, 1944, that the said decree of injunction be amended and made more specific and clear "so as to include by direct reference the supplemental order of the Commission of June 12, 1944, or that [in the alternative] the Court enter a supplemental order to the same effect." Such relief was sought primarily on the ground that the supplemental order was in violation of the decree, because the Commission in its supplemental report had made "no new, additional or different findings from the findings of January 18, 1944, which this Court heretofore found fatally

insufficient." The further proceeding before the Commission was characterized in the motion as "a flagrant disregard of the order of this Court, a failure and refusal to follow the statutory provisions for appeal and * * * a frivolous proceeding to circumvent the injunction issued by the Court." As an additional ground for such relief, the motion set up general allegations of unlawfulness, namely, that the order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission."

Following the filing of the motion by the carrier and the Virginia Commission, the United States filed with the Court a motion for new trial and new judgment dismissing the complaints, the motion being made under Rule 59 (a) and (b) of the Federal Rules of Civil Procedure and being based on the ground that the Commission's supplemental report and findings on a new or reconsidered record constitute newly discovered material evidence of a kind within the provisions of the Rule. The Commission filed answer to the motion of the carriers and the Virginia Commission in which it denied that either its order of June 12, 1944, or its reopening of the proceeding was violative of the Court's decision or decree, but that, on the contrary, the action taken by it was responsive thereto; that, since it considered that the Court was right in holding that it had not made

adequate findings to support its conclusion that its taking of jurisdiction was necessary to carry out the national transportation policy, it would not have been justified in appealing therefrom; and that the course which it followed of immediately reopening the case did not constitute a failure to follow the statutory proceeding but, on the contrary, was squarely in line with its special purpose of expediting the Court review of action of the Commission and also with the duty of the Government and Commission not to burden the Supreme Court with unnecessary appeals; that, as for the question of the applicability of the exemption provision of section 203 (b) (8) of the Act, while doubtless that question was legal, it was one of basic jurisdiction depending largely on fact, and that, where in such case, and, as here, it was of the view that the record of facts, or its report, was in need of amplification or clarification, it believed that it was expected to take corrective action and not to appeal in such condition of the record; that any other rule (whether of *res judicata* or other doctrine designed especially to fit private litigation) would be contrary to the public interest and generally in conflict with the objectives of the special procedure for review of Commission action; that, even assuming that it was wrong in this, which it did not believe to be the case (Cf. *Baltimore & O. R. Co.* v. *United States,* 24 F. Supp. 734, 735; *United States* v. *Griffin,* 303 U. S. 226,

228), its reopening of the proceeding directly responsive to the Court's holding of inadequacy of findings to support its taking of jurisdiction under the national transportation policy, was action, which upon the curing of the defect, would clothe it with jurisdiction; and that, since, contrary to the allegations in the motion, it had made full and adequate findings curing such defect, it had thereby become clothed with the jurisdiction which thereupon exercised.

Further answering the motion of the carriers, the Commission alleged that, except as the motion might be taken to constitute a bill of complaint seeking the setting aside of the order of June 12, 1944, it was wholly without substance, the relief prayed outside the Court's authority and the motion generally dilatory; and, moreover, that the motion's general allegations that the said order was invalid because of inadequate findings and because unreasonable, contrary to the evidence and in excess of its authority did, in fact, constitute the pleading a bill of complaint.

The United States, in addition to filing its motion, above referred to, filed a statement in answer to the motion of the carriers and the Virginia Commission, in which the position taken by it was generally the same as that of the Commission and in which it stressed the fact that the reopening of the proceeding by the Commission to supply the findings which the Court found lacking

in its previous report was responsive to the Court's opinion and that the Commission's action in this respect was its consistent practice and entirely in harmony with court decisions.

Following hearing on the carriers' motion and that of the United States, the District Court, on August 25, 1944, rendered its decision denying the motion of the United States and holding that the Commission's order of June 12, 1944, should be enjoined and set aside; and on September 20, 1944, it entered its decree setting aside and permanently enjoining the said order. The Court, in referring in its opinion to the reopening by the Commission of its proceedng and the fact that the Commission's order prescribed the same fares as those prescribed by its earlier order, said:

> Without applying to this court for a modification of the order of this court of May 15, 1944, the Commission proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this court. Although it is rather difficult to understand the conduct of the Commission in undertaking to put into effect an order this court had enjoined, we have nevertheless taken into consideration the new report of the Commission and the evidence upon which it is based.

The grounds upon which the Court based its decision were, similarly as in the case of its prior opinion, that the transportation involved was exempted by section 203 (b) (8) of the Act and that the Commission had not made the findings necessary to support its conclusion that the application of the Act was necessary to carry out the national transportation policy. Speaking of the question of whether the transportation was exempted, the Court said:

> As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

Concerning the question of the adequacy of the Commission's findings to support its taking of jurisdiction as necessary to carry out the national transportation policy, the Court stated that the Commission based its conclusion chiefly on the finding that the employees of the Pentagon were dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, the Court said that "apart from the fact that the dissatisfaction of the employees with the fares charged is ground for finding that their reduction is neces-

sary to carry out the national transportation policy, there is a mere scintilla of evidence to support this finding." (sic.) Following this statement, the Court discusses certain of the evidence and apparently concludes that it is not substantial. With respect to the second ground, the Court said:

> As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

The Court's concluding holding reads:

> We hold that the facts found by the Commission do not support its conclusion that its taking jurisdiction is necessary to the national transportation system.

Circuit Judge Arnold issued an opinion dissenting from the conclusions of the majority, which not only sustained the defendants on the jurisdictional issues, but also completely upheld the Commission's action on the merits

Thereafter, on September 20, 1944 the Court issued findings of fact and conclusions of law, implementing its written decision, as well as the final decree, here sought to be reviewed, enjoining

the Commission's order. Copies of the Court's opinion of May 15, 1944, the majority and dissenting opinions of August 25, 1944, and the findings of fact, conclusions of law and final decree of September 20, 1944 are hereto attached.

The questions presented by this appeal are substantial, and defendants believe, as Justice Arnold also did, that the majority of the Court is clearly wrong. As appears from the foregoing, the Commission has concluded that the municipal zone exemption of Section 203 (b) (8) does not deprive it of jurisdiction over this transportation for two reasons: (1) because it has found that these carriers are not engaged in intrastate transportation over the entire length of their interstate lines and that the exemption is therefore by its terms not applicable; and (2) because it has found, as it is authorized to do under the Act, that, even if the exemption were otherwise applicable, its removal with respect to the present transportation was necessary to carry out the national transportation policy. The District Court must be reversed if it was in error in rejecting either of these ultimate findings. Defendants believe that the Court in setting aside these findings has exceeded its power by weighing the evidence and substituting its judgment for that of the Commission on technical factual questions, the determination of which Congress has specifically entrusted to the Commission. Not only is the first finding of the Com-

mission supported by substantial evidence, but by preponderant evidence. The court's contrary finding that these carriers were engaged in intrastate transportation over the entire length of their interstate lines, is clearly based upon assumptions which are plainly wrong in the light of the uncontradicted testimony of record.[1]

It is apparent too that there was a rational basis in the Commission's subordinate findings in its supplemental report for the second ultimate finding above. Thus, the Commission found that

[1] This is particularly evident with respect to the Capital Transit Company, which indeed never alleged before the Court that it conducted any intrastate operations in Virginia. In its first operation the Court remarked: "The fact that the Capital Transit Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate." In fact, however, it is obvious from the record that this company actually makes no stops in Virginia except at the Pentagon, as is indicated by the following statement in the Commission's supplemental report:

"At the original hearing the president and general manager of the Transit Company testified that the company was not engaged in any intrastate operations in Virginia over any of its interstate routes in the area here considered. In other of his testimony he said, among other things, that, so far as he knew, there was no pick-up or discharge of passengers by the company's Pentagon bus lines outside the District of Columbia other than at the Pentagon Building; that the company had no authority to use the lines for short haul of passengers in Virginia; and that it was its intention to operate between certain points in the District to the Pentagon, conducting 'a through express type of service to serve the War Department Building.'"

these military and naval installations constituted the "nerve center of the war effort in this country"; that the existing fares between these buildings and the District of Columbia were a source of dissatisfaction among the employees, who were in relatively low income groups, and an element influencing some of them to leave the Government service; and that no state agency was empowered to regulate these interstate rates. The national transportation policy directs the Commission, among other things, "to promote economical service * * * all to the end of developing coordination and preserving a national transportation system by water, highway and rail * * * adequate to meet the needs of the * * * national defense," and directs, further, that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above policy." In the light of the Commission's subordinate findings it seems obvious that the Commission might well find that application of the provisions of the Act to this transportation was "necessary" to carry out the Congressional policy. The refusal of the majority of the Court to accept the Commission's conclusion in this respect, as Justice Arnold in his dissent points out, is due to a peculiar interpretation of the word "necessary" as used in Section 203 (b) (7a) authorizing the Commission to remove the exemption when it finds that application of the Act is "neces-

sary" to carry out the national transportation policy. The majority hold, as he says, that as a matter of law no necessity for federal regulation of military transportation can exist until it is evident "that the war work of the Government is materially affected." Defendants believe that there is complete justification for Justice Arnold's conclusion in this connection, that "nothing in the Act supports a construction so contradictory to common sense."

The disposition of the case by the District Court on the above narrow ground leaves undecided numerous other important issues. Particularly important is the question of the Commission's jurisdiction over transportation which is in part by motor carrier and in part by street electric railway, where the two kinds of transportation are for purposes of practical administration, inseparable. If the District Court's decision is reversed, defendants believe, in view of the pressing need for a speedy determination of this whole war-related case, that this Court may properly also consider these other issues on the present appeal.

D. *Cases Sustaining the Supreme Court's Jurisdiction on Appeal*

United States v. *Carolina Freight Carriers Corp.*, 315 U. S. 475.

Alton Railroad Co. v. *United States*, 315 U. S. 15.

Noble v. *United States*, 319 U. S. 88.
Crescent Express Lines v. *United States*, 320 U. S. 401.
Board of Trade of Kansas City v. *United States*, 314 U. S. 534.
Union Stock Yard Co. v. *United States*, 308 U. S. 213.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated September 23, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

WENDELL BERGE,
Per R. L. P.,
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Per R. L. P.,
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

EXHIBIT A

In the District Court of the United States for the District of Columbia

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CIVIL ACTION 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before MILLER, Associate Justice, United States Court of Appeals, District of Columbia, and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court

BAILEY, *J.*:

Each of the above-named plaintiffs has brought an action to set aside an order of the Interstate Commerce Commission of January 18, 1944, as extended by an order of February 14, 1944. These actions have been consolidated for trial.

The orders of the Commission were made pursuant to an investigation instituted at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand.

The Pentagon is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the 14th Street Highway Bridge. The Navy Annex is about two miles south of the Virginia end of the Memorial Bridge, and about one mile west of the Pentagon Building. It is reached from the Memorial Bridge over Arlington Ridge Road, which does not run by the Pentagon.

The Army Annex is on the Mt. Vernon Memorial Highway, about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.7 mile beyond.

The Transit Company furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other hand. All four serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington Line. The Army Annex and the Airport are served only by the Alexandria line. All of the plaintiffs operate lines over both the Memorial Bridge and the Highway Bridge. The routes over which plaintiffs operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

After hearings the Commission undertook to fix fares between all points of the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Traction Company, and the Pentagon, the Navy Annex, the Army Annex, and the Airport, on the other hand, including joint fares between the Capital Traction Company and the Virginia Companies. Each of the plaintiffs claims that the Commission was without jurisdiction to make the order complained of.

The Interstate Commerce Commission Act, Section 203 (6), (7a), and (8) (49 U. S. C. 303 (6), (7a), and (8)) excepts from the jurisdiction of the Commission certain municipal zones. This section provides:

> (7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *

All the operations in question are performed within the territorial limits of the District of Columbia municipal zone prescribed by the Inter-

state Commerce Commission, Washington District of Columbia Commercial Zone, 3 M. C. C. 243. The first question that arises is the meaning of the phrase "lawfully engaged in the infrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction." The Commission contends that the Capital Traction Company is not engaged in intrastate transportation in Virginia and that the Virginia companies are engaged in only limited intrastate transportation in the District of Columbia. But the transportation from the Virginia line to the Pentagon is intrastate, and is subject to regulation by the State Corporation Commission of Virginia, and the Virginia companies not only do local business in Virginia but, while their intrastate business in the District of Columbia may be said to be limited, their transportation in the District of Columbia is regulated by the Utilities Commission of the District of Columbia. The fact that the Capital Traction Company does not pick up and discharge passengers at many stops in Virginia does not prevent its transportation in Virginia from being intrastate. As stated by the Commission:

> This is urban, mass transportation between points in the District and points in Virginia just beyond the District line, and is the same in all characteristics as transportation between residential areas of the District and commercial and Government establishments in the District.

The transportation involved here is not interurban but, as the Commisison says, urban trans-

portation and, as such, it was not, in our opinion, the intention of Congress to confer jurisdiction on the Commission to regulate fares for transportation of this nature.

Section 216 (e) of the Motor Carrier Act contains this proviso:

> *Provided, however,* That nothing in this part (the Motor Carrier Act is Part II of the Interstate Commerce Act) shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

The effect of the Commission's ruling is to regulate fares for intrastate transportation for it provides for a fare over a large intrastate system of transportation under the guise of regulating fares for what is substantially urban transportation between the District of Columbia and points in nearby Virginia.

The Commission says:

> All that the Commission's order does here is to extend the District of Columbia rate base and the District of Columbia fares of the Capital Transit Company both cash and token to cover this Virginia transportation.

Indeed, the order of the Commission makes clear that its basic theory is that these Virginia installations should be treated, for transportation purposes, as part of the District.

As we are of the opinion, as above stated, that the Commission has misconstrued the statutes in holding that the various plaintiffs are not "also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction," it is not necessary to decide whether the Commission has jurisdiction over fares over the electric street railway lines of the Capital Traction Company, which constitute about half the entire mileage operated by the street cars and busses of the Capital Traction Company in the District of Columbia.

The Commission, however, after taking the view that it had jurisdiction by virtue of its construction of the Act of Congress set out, added:

> In any event, we are of the opinion and find application of the Act to that transportation is, in the language of section 203 (6) (7a) necessary to carry out the national transportation policy.

The National Transportation Policy, as defined in the section of the Act quoted, is as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue

> preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. * * *.

The Commission does not say, however, in what respect its order complies with the National Transportation Policy, nor does it make any findings to support its general conclusion that its order "is necessary" to carry out the National Transportation Policy.

In *City of Yonkers* v. *United States*, 320 U. S. 685, 689–692:

> The Commission itself has noted that in the "construction of these exclusion clauses great difficulty has been experienced, particularly in determining the roads properly classifiable as interurban electric railways." Annual Report (1928), p. 80. That difficulty is apparent here by the division of opinion which exists in the Court whether this Yonkers branch is an "interurban electric" railway which is "operated as a part" of the New York Central system. § 1 (22). As stated by Mr. Justice Brandeis in *United States* v. *Idaho*, 298 U. S. 105, 109, determination of what is included within the exemption of § 1 (22) involves a "mixed question of fact and law." Congress has not left that question exclusively to admin-

istrative determination; it has given the courts the final say. *Id.*, p. 109. It is settled that the aid of the Commission need not be sought before the jurisdiction of a court is invoked to enjoin violations of the provisions in question. *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266. And the fact that the Commission fails to make a finding on this jurisdictional question obviously does not preclude the reviewing court from making that determination initially. But we deem it essential in cases involving a review of orders of the Commission for the courts to decline to make that determination without the basic jurisdictional findings first having been made by the Commission.

* * * In the application of the doctrine of the *Shreveport* case, this Court has required the Commission to show meticulous respect for the interests of the States. It has insisted on a "suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear." *Florida* v. *United States*, 282 U. S. 194, 211–212. In that case this Court set aside an intrastate rate order of the Commission because of the "lack of the basic or essential findings required to support the Commission's order." *Id.*, p. 215. The principle of the *Florida* case is applicable here. The question is not merely one of elaborating the grounds of decision and bringing into focus what is vague and obscure. See *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499. Cf. *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80. Here as in

the *Florida* case the problem is whether the courts should supply the requisite jurisdictional findings which the Commission did not make and to which it even failed to make any reference.

* * * The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the federal and state domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears. The sacrifice of these legitimate local interests may be as readily achieved through the Commission's oversight or neglect (*Illinois Commerce Commission* v. *Thomson*, 318 U. S. 675) as by improper findings. The insistence that the Commission make these jurisdictional findings before it undertakes to act not only gives added assurance that the local interests for which Congress expressed its solicitude will be safeguarded. It also gives to the reviewing courts the assistance of an expert judgment on a knotty phase of a technical subject.

We are asked to presume that the Commission, knowing the limit of its authority, considered this jurisdictional question and decided to act because of its conviction that this branch line was not exempt by reason of § 1 (22). But that is to deal to cavalierly with the Congressional mandate and with the local interests which are pressing for recognition. Where a federal agency is authorized to invoke an overriding federal power except in certain prescribed situa-

tions and then to leave the problem to traditional state control, the existence of federal authority to act should appear affirmatively and not rest on inference alone.

This is not to insist on formalities and to burden the administrative process with ritualistic requirements. It entails a matter of great substance. It requires the Commission to heed the mandates of the Act and to make the expert determinations which are conditions precedent to its authority to act.

We intimate no opinion on the merits of the controversy. For in absence of the requisite jurisdictional findings we think the order of the Commission should have been set aside.

Inasmuch, then, as we are of the opinion that the Commission had no jurisdiction, unless it be necessary to carry out the national transportation policy, and, as the Commission has made no findings to support that conclusion, the order of the Commission should be set aside.

It is unnecessary to pass upon other questions raised in the pleadings.

An order will be entered directing the defendant Interstate Commerce Commission to set aside the order of July 3, 1943, and perpetually enjoining its enforcement.

(S) JUSTIN MILLER.
(S) JENNINGS BAILEY.
(S) F. DICKINSON LETTS.

EXHIBIT B

In the District Court of the United States for the District of Columbia

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CIVIL ACTION 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Before ARNOLD, Associate Justice, United States Court of Appeals, District of Columbia; and BAILEY and LETTS, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court

BAILEY, *J.*:

These causes have been heard on the motion of the various carriers to amend the order of this court entered on May 15, 1944, enjoining the enforcement of the order of the Interstate Commerce Commission of January 18, 1944 so as to provide for the issuance of an order enjoining the enforcement of a subsequent order of the Interstate Commerce Commission of June 12, 1944; and also a motion of the United States for a retrial of these causes and a modification of the order of this court of May 15, 1944.

At the hearing of the foregoing motion it was stipulated by all parties in open court that Justice Thurman W. Arnold of the United States Court of Appeals of the District of Columbia might sit in lieu of Justice Justin Miller who was absent from the District.

In its opinion and findings of fact of this court filed on May 1, 1944, the court held in substance that the Interstate Commerce Commission was without jurisdiction to make its order of January 18, for the reason that the carriers were engaged in intrastate commerce throughout the entire length of their lines and that the Interstate Commerce Commission had not made findings of fact sufficient to justify its conclusion that it had jurisdiction because its action was necessary to carry out the national transportation policy.

Without applying to this court for a modification of the order of this court of May 15, 1944, the Commission proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this court. Although it is rather difficult to understand the conduct of the Commission in undertaking to put into effect an order this court had enjoined, we have nevertheless taken into consideration the new report of the Commission and the evidence upon which it is based.

As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

As to the new evidence and findings of fact upon which the Commission undertakes to conclude that it has jurisdiction because it "is necessary to carry out the national transportation policy," the Commission bases its conclusion chiefly on the finding that the employees of the Pentagon are dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, apart from the fact that the dissatisfaction of the employees with the fares charged by the carriers is ground for finding that their reduction is necessary to carry out the national transportation policy, there is a mere scintilla of

evidence to support this finding. The Commission's findings were that many of the passengers to the Pentagon are low-salaried employees of the Government and that a representative group of them were dissatisfied with the fares. As to the latter finding, it clearly appears that the proportion of turnover of employees at the Pentagon did not exceed the average in government departments, and in only a very few instances did employees give the rate of fares as the cause of their dissatisfaction.

It must be observed that there has been no raising of fares by the carriers whereby the national transportation policy has been affected.

As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

We hold that the facts found by the Commission do not support its conclusion that its taking jurisdiction is necessary to the national transportation system.

The motion of the United States for a new trial should be overruled and the order of the Commission of June 12, 1944 be set aside and its enforcement permanently enjoined.

(Sgnd.) JENNINGS BAILEY.
(Sgnd.) F. DICKINSON LETTS.

ARNOLD, *J.*, dissenting:

This case arose out of a complaint by the Secretaries of War and the Navy concerning the fares charged by the Capital Transit Company and other companies engaged in carrying employees across the District Line to the Pentagon Building and other military installations in Virginia. After the complaint was received the Interstate Commerce Commission instituted its own investigation and held hearings. It finally ordered that the Capital Transit Company carry passengers to the Pentagon Building for a cash fare of 10¢ or a fare of 8⅓¢ if commutation tickets were purchased, and that a joint fare between the companies involved in this case be fixed at $1.60 for twelve one-way trips, including transfer privileges.

By a former decision of a three-judge court in these proceedings this order of the Commission was set aside. That court held (1) that the Commission had no jurisdiction to fix the rates or to establish joint fares because the operations were wholly within the commercial zone designated by the Interstate Commerce Commission and there was intrastate transportation over the entire interstate lines;[1] and (2) that the Commission had made no findings to support its conclusion that its jurisdiction was necessary in the interests of the national transportation policy. After this decision the Commission held further hearings and made supplemental findings to the effect that the exercise of the Commission's jurisdiction was necessary in the national defense. It then issued a second order putting into effect the rates pre-

[1] See 49 U. S. C. A. 303 (b) (7a) (8).

viously enjoined in this court. It is that second order which plaintiffs seek to enjoin in this case.

The opinion of the majority that the Commission has no jurisdiction to issue an order regulating the transportation in this case seems to me clearly in error. The statute plainly gives the Commission jurisdiction over the transportation of passengers in interstate or foreign commerce within a municipality or between contiguous municipalities or zones commercially a part of a municipality to the extent that the Commission shall find it necessary to carry out the national transportation policy declared in the Act. This explicitly covers transportation between the District of Columbia and the Pentagon Building in Virginia.

This national transportation policy which the Commission finds it necessary to carry out is defined by an amendment to the Interstate Commerce Act in 1940.[2] In so far as the policy relates to national defense the declared intention of Congress is to provide for a fair and impartial regulation of all modes of transportation "to promote safe, adequate, economical, and efficient service * * * to encourage the establishment and maintenance of reasonable charges * * * all to the end of developing, coordinating, and preserving a national transportation system * * * to meet the needs * * * of the national defense." The Commission has found in unequivocal terms that the regulation of fares from the District of Columbia to the general headquarters of the Army in the Pentagon Building in Virginia

[2] 54 Stat. 899 (1940), 49 U. S. C. A. preceding Sec. 301.

is necessary in the national defense. Unless these findings are arbitrary and unreasonable the jurisdiction of the Commission in this case is beyond question.

Even in the absence of evidence, judicial notice of the intimate connection of the work done at the Pentagon Building and the other installations with the operation of our armies in the field would seem sufficient support for the findings relating to the Commission's jurisdiction over the transportation of the thousands of employees who are part of our national military headquarters. But, in addition, we have the testimony of responsible Army and Navy executives, backed up by the opinions of the Secretaries of War and the Navy, that the Commission's regulation is necessary to the national defense. It is true that, for the most part, this testimony is opinion evidence. But, the factors which contribute morale and efficiency in the armed services can only be based upon opinion since they relate to the future operations. They can never be statistically proved. For a three-judge court, without experience in or responsibility for military organization, to impose its own ideas of whether federal regulation of military transportation is necessary in the national defense against the judgment of the men who are responsible for the morale and discipline of our armies is unwarranted in time of peace and reckless in time of war.

The informed opinion of such men is all we have to guide us in military matters. The testimony of those responsible for our military organization is unanimous that military efficiency requires unified federal regulation of the trans-

portation of military personnel from the District of Columbia to general headquarters across the state line rather than the uncoordinated control by independent local commissions, none of which have jurisdiction over the entire route. Certainly this judgment seems reasonable on its face. Nothing in the record gives this court the slightest justification for disregarding it.

The reasoning on which the majority base their refusal to follow the testimony of military experts that the Commission's regulation was necessary in this case is based upon a peculiar interpretation of the word "necessary" as it is used in Section 303 (b). That section directs the Commission to apply the Act to interstate transportation within a municipal area "to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy". The majority hold that as a matter of law no necessity for federal regulation of military transportation can exist until it is evident "that the war work of the government is materially affected". In other words, it is never permissible for the Commission to regulate in order to plan for more efficient military transportation or to avoid future impairment of the military operation. An uncoordinated system of regulation which in the opinion of military experts is dangerous to national defense must be permitted to continue until there is an actual breakdown in military transportation. The majority infer that such a breakdown must be serious because they lay stress on evidence that the present turnover of the employees of the Pentagon Building is no greater than the average

in government departments and that dissatisfaction has not yet become general. It thus appears that average performance is all that our military command is entitled to strive for in time of war and that the necessity of regulation to promote the maintenance of reasonable rates, as described in the Act, cannot exist until military employees become so dissatisfied that in a time of crisis they begin to desert their posts in substantial numbers. In other words, before the Commission can attempt to perform its duty to promote reasonable rates in the interests of national defense the existing rates must be higher than the traffic will bear.

Nothing in the Act supports a construction so contradictory to common sense. The language in the Act that the Commission may regulate whenever it is necessary to encourage the establishment and maintenance of reasonable rates does not mean that it must withhold its hand until real harm has been done to the war effort. It is probably true that no measurable harm to the war effort will be occasioned by any rate, however excessive. It is the duty of the general staff to carry on in spite of every difficulty and it is to be hoped that the personnel attached to military headquarters will be at their posts regardless of personal hardship. But the ability of our military command to carry on in the face of handicaps does not justify this court in denying the Commission an opportunity to make its task easier by following the mandate of the statute to encourage and maintain reasonable rates in aid of national defense.

Assuming the power to regulate, the question of whether the rates are confiscatory is a separate inquiry. However, nothing in the record supports the contention that there is confiscation in the Commission's order. According to the testimony, the average one-way trip involved from the District of Columbia to the Pentagon Building is 6.21 miles, less than half the maximum distance that a person may travel entirely within the District on a single 8 1-3¢ token. Further testimony showed that the cost of the entire trip was 7.06¢, which is below the 10¢ cash fare and the 8 1-3¢ commutation fare ordered by the Commission. As has been said in *St. Joseph Stock Yards Co.* v. *United Stacs:*[3] "The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established."

The only showing as to confiscation was made by the Capital Transit Company. This was done on the theory that the trip from the District Line to the Pentagon Building could be separated from the entire transportation and its cost separately assessed. This evidence is irrelevant because there is no justification for computing the cost of portions of the trip to the Pentagon Building separately. Under the Act the Commission has jurisdiction over the entire transportation. It must, therefore, consider it as a whole.

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[3] 298 U. S. 38, 53 (1936). See also *Darnell* v. *Edwards*, 244 U. S. 564, 569 (1917); *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, 305 (1933).

The other points raised by plaintiffs do not require extended discussion. It seems clear that the Commission's jurisdiction over the interstate carriage of passengers to the Pentagon Building includes the power to compel joint rates, to issue commutation tickets, or to make any other regulations necessary to carry out the transportation policy in the Interstate Commerce Act.

Finally, I believe that the court is in error in adhering to its former opinion that the Commission had no jurisdiction over the interstate transportation involved in this case because the carriers were also lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route. The findings of the Commission seem to me sufficient to justify its assumption of jurisdiction in this case on the ground that the carriers affected by its order did no substantial intrastate business over the entire length of the interstate routes which were regulated. However, since the jurisdiction in aid of the national defense is so clear it is unnecessary to discuss this aspect of the case in detail. The order of the Commission should be sustained.

(Sgnd.) THURMAN ARNOLD.

EXHIBIT C

In the District Court of the United States for the District of Columbia

CIVIL ACTION NO. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION NO. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the pleadings, evidence and argument and supplemental pleadings, evidence and argument and briefs of counsel the Court makes the following:

FINDINGS OF FACT

1. The Capital Transit Company is engaged in the transportation of passengers for hire by bus and street car within the District of Columbia and nearby Virginia, and by bus between two designated termini in the District and the War Department Pentagon Building in the State of Virginia; the Virginia companies, that is, the Arlington & Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Company, Inc., and the intervenor, Alexandria, Barcroft & Washington Transit Company are engaged in the transportation of passengers for hire by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District on the one hand, and points in Virginia, on the other hand; all three of the Virginia companies serve the Pentagon Building; the Navy Annex is served by the Alexandria line and the Arlington line; the Army Annex and the Washington National Airport are served only by the Alexandria line; all of the plaintiff companies and the intervenor operate lines over both the Memorial Bridge and the Highway Bridge; the routes over which the plaintiff companies and the intervenor operate in the District were prescribed by the Public Utilities Commission of the District of Columbia.

2. The proceeding before the Interstate Commerce Commission, Docket No. 28991, out of which this action arose, was begun by that Commission at the request or complaint of the Secretary of War, concurred in by the Secretary of the Navy, for an investigation into the reasonableness and lawfulness of fares for the transportation of passengers between all points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Annex, the Army Annex and the Airport, on the other hand. Following the order of this Court of May 15, 1944, enjoining the order of the Commission of January 18, 1944, the Commission without applying to this Court for a modification of the order of this Court of May 15, 1944, proceeded to reopen its hearings, to take further testimony, to make additional findings, and to enter a new order on June 12, 1944, which was, in effect, the same order that had been permanently enjoined by this Court.

3. The Pentagon Building is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about 1.5 miles west of the Virginia end of the Fourteenth Street Highway Bridge; the Navy Annex is about two miles south of the Virginia end of the Memorial Bridge and about one mile west of the Pentagon Building; the Navy Annex is reached from the Memorial Bridge over Arlington Ridge Road which does not run by the Pentagon; the Army Annex is on the Mt. Vernon Highway about 1.75 miles south of the Virginia end of the Highway Bridge, and the Airport is approximately 0.5 mile beyond.

4. By order dated January 18, 1944, the Commission undertook to fix fares between all points in the District of Columbia, on the one hand, including those served by the electric street railways of the Capital Transit Company, and the Pentagon, the Navy Annex, the Army Annex and the Airport, on the other hand, including joint fares between the Capital Transit Company and the Virginia companies. The supplemental order of June 12, 1944, fixed the same fares between the same points.

5. The order dated January 18, 1944 and the order dated June 12, 1944, undertook to extend and expand the District of Columbia fare-boundary to include the Pentagon Building so as to permit a passenger to ride to the Pentagon on the lines of the Capital Transit Company from any point in the District of Columbia for the existing District fares established by the Public Utilities Commission of the District of Columbia.

6. All of the operations involved are performed within the territorial limits of the District of Columbia commercial zone prescribed by the Interstate Commerce Commission, Washington District of Columbia Commercial Zone, 3 MCC 243.

7. All of the transportation here involved is urban mass transportation within the Washington District of Columbia Commercial Zone.

8. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

9. The Court has not passed upon any of the questions of law raised by the parties other than those set forth in those Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction in this proceeding under the provisions of the Act of October 22, 1913; 28 USCA Sec. 47.

2. The Interstate Commerce Commission has no jurisdiction for the purpose of fixing fares or establishing joint fares for the operations here involved since said operations are local and intra-terminal in nature and are conducted wholly within the Washington District of Columbia Commercial Zone designated by the Commission in 3 MCC 243.

3. All of the plaintiffs and the intervenor are lawfully engaged in intrastate transportation over the entire length of the lines in the operations here involved in accordance with the laws of each state having jurisdiction.

4. The Commission has not made adequate findings, either in the original report and order of January 18, 1944, or in the supplemental report and order of June 12, 1944, to support the conclusion that the exercise of its jurisdiction over plaintiffs and the intervenor is necessary to carry out the National Transportation policy.

5. Neither the original record nor the supplemental record contain substantial evidence upon which the Commission could make proper and adequate findings to support the conclusion that

the exercise of its jurisdiction is necessary to carry out the National Transportation policy.

6. The Commission had no jurisdiction to issue the order of June 12, 1944.

7. It is unnecessary to pass upon any of the other questions of law raised by the parties.

EXHIBIT D

In the District Court of the United States for the District of Columbia

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CIVIL ACTION No. 23420

CAPITAL TRANSIT COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23421

ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23422

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, INC., A CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 23423

STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

ORDER GRANTING PERMANENT INJUNCTION

These causes came on for hearing on the motion of the various carriers to amend the order of the Court entered on May 15, 1944, enjoining the enforcement of the order of the Interstate Commerce Commission of January 18, 1944, so as to provide for the issuance of an order enjoining the enforcement of a subsequent order of the Commission of June 12, 1944; upon the answers of the United States and of the Commission to said motion; upon a motion of the United States for a retrial of the causes and a modification of the order of the Court of May 15, 1944; upon the evidence and record of the proceedings before the Commission, including the evidence and record of the supplemental proceedings before the Commission held in May, 1944; and upon the oral argument and briefs of counsel. And it appearing to the Court that the Commission, in its supplemental order of June 12, 1944, did not make findings sufficient to support its conclusion that the exercise of its authority is necessary to carry out the National Transportation policy, and it further appearing to the Court that the Commission was without jurisdiction to issue the report and order of June 12, 1944, it is by the Court this 20th day of September, 1944,

ORDERED, That the Order of the Interstate Commerce Commission dated June 12, 1944, in Docket No. 28991, be and it is hereby set aside and permanently enjoined and the defendants, their agents and employees, are hereby permanently enjoined from enforcing or attempting to enforce the rates

of fare, joint fares, commutation fares and other requirements set forth in said order, or any fares whatsoever with respect to the transportation services involved in these proceedings.

U. S. GOVERNMENT PRINTING OFFICE: 1944

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the District Court directly involved (R. 912) is reported in 56 F. Supp. 670, and its earlier related opinion (R. 943) is reported in 55 F. Supp. 51. The original and supplemental reports of the Interstate Commerce Commission (R. 835, 813) are reported in 256 I. C. C. 769 and 258 I. C. C. 559.

JURISDICTION

The final decree of the District Court (R. 952) was entered September 20, 1944, and the appeal was allowed the same day. (R. 954.) Probable jurisdiction was noted December 11, 1944. The Court's jurisdiction rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; 28 U. S. C. Supp. III, secs. 45 and 47a) and section 238 of the Judicial Code as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C., sec. 345).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED

The Commission, in a proceeding involving (1) the street car and motor bus fares charged by the Capital Transit Company for transportation between points in the District of Columbia and the Pentagon Building in Virginia, (2) the through fares charged by the Transit Company and certain motor carriers (hereinafter called the Virginia Lines) for transportation between points in the District and the Pentagon Building and other Government installations in Virginia and (3) the local fares charged by the Virginia Lines between their terminals in the District and the installations in Virginia, determined, after hear-

ing, that the fares (with exceptions) were unreasonable and by order prescribed the fares to be established and charged in lieu thereof. In enjoining the order, the District Court held (reversing the Commission in this respect) that the motor carrier transportation involved fell within the "commercial zone" exemption[1] from the Act's application and was exempt except as the Commission's conclusion, reached in the case, that such application was necessary to carry out the national transportation policy was validly made. As to this latter, the court held that the Commission's conclusion was without support of adequate findings and evidence.

The primary questions presented, therefore, are whether the District Court did not err (1) in holding that the transportation involved fell within the exemption from the Act, and (2) in holding that the Commission's conclusion, removing the application of such exemption, was inadequately supported by the findings and evidence.

Further questions presented[2] are whether the Commission exceeded its statutory authority

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[1] Interstate Commerce Act, Part II, Sec. 203 (b), (7a), (8).

[2] The District Court, having held that the transportation involved was exempted from the Act except as the Commission's conclusion, in effect removing the exemption, was supported by adequate findings, and that such was not the case, refused to pass upon the further questions raised, but, for reasons hereinafter given, it is believed and understood that such refusal does not preclude review by this Court.

(1) in acting directly on the question of the reasonableness and lawfulness of the fares instead of referring the matter to a joint board;

(2) in assuming and exercising authority over the street car as well as the motor bus operations of the Transit Company, and

(3) in prescribing token and ticket book fares—alleged to be commutation fares,

and whether the level of fares prescribed by the Commission was confiscatory, without support of substantial evidence or in any other respects arbitrary.

STATEMENT

This is a direct appeal from a final decree (R. 952) of the court below setting aside and permanently enjoining an order of the Commission of June 12, 1944, made in connection with a supplemental report of the same date issued upon rehearing and reconsideration in a proceeding known as No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia.*

1. COMMISSION PROCEEDING

The Commission proceeding was an investigation which, at the request of the Secretary of War, concurred in by the Secretary of the Navy, the Commission, by order of July 3, 1943, instituted into the reasonableness and the lawfulness

otherwise of the fares of the carriers involved[3] for the transportation of passengers between points in the District of Columbia, on the one hand, and points on the Virginia side of the Potomac River to and including the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, on the other hand.[4] In the original report, the Commission, in describing the operations involved in the proceeding, said (R. 837):

> The Transit Company furnishes regular urban and suburban street-car and bus service for the transportation of passengers in the District and nearby Maryland and bus service between the District and the Pentagon. The Virginia Lines transport passengers by bus between points in Virginia in the general vicinity of the District, and between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other. All four of the respondents serve the Pentagon. The Navy Annex is served by the Alexandria Line and the Arlington

[3] The Capital Transit Co., the Alexandria, Barcroft and Washington Transit Co., the Arlington and Fairfax Motor Transportation Co., and the Washington, Virginia & Maryland Coach Co., hereinafter referred to as the Transit Company, the Alexandria Line, the Arlington Line and the Coach Company.

[4] Temporary operating authorities of the Transit Company and Coach Company have been extended. See Appendix B.

Line. The Army Annex and the Airport are served only by the Alexandria Line. All of the respondents operate lines over both the Memorial Bridge and the Highway Bridge. * * *

Pentagon service by the Transit Company is operated only during the morning and afternoon rush hours and the transportation performed is practically 100 percent from the District to the Pentagon in the morning and from the Pentagon to the District in the afternoon. * * *

Virginia installations served by the Alexandria Line and the Arlington Line are located on some of the regular routes of those lines to and from points beyond, although operation over additional mileage, which assumes considerable proportions in the aggregate, is necessary in order to reach points of actual loading and unloading at such installations. Regularly scheduled busses serve these points throughout the day, and additional busses are operated during rush hours. These lines have a heavy volume of passenger traffic to the District during the morning rush hours and from the District during the afternoon rush hours. The traffic here considered is in the reverse direction during those respective periods. Under the system of staggered working hours now in vogue, it is apparent that, to a certain extent, the same busses may be used in transporting Government employees between Virginia and the District, in op-

posite directions, during the same rush-hour period.

The Coach Company is a minor factor in the transportation here considered. It serves only the Pentagon, and that service is not over a regular route, but consists of a few out-of-route trips during the morning and afternoon rush hours.

Fares of the Transit Company for its service in the District are 10 cents, three tokens for 25 cents, or a weekly pass which is sold for $1.25. Free transfers are issued between all company lines. This company operates two bus lines to the Pentagon, one of which, its R–2 line, is routed over the Memorial Bridge and has its District terminal at 19th and C Streets, N. W., and the other of which, its Q–2 line, is routed over the Highway Bridge and has its District terminal at 7th Street and Constitution Ave., N. W.[5] Over the R–2 line the fare is 5 cents each way, without restriction or limitation. The fare, however, over the Q–2 line from or to any point in the District served by the Transit Company (including its Q–2 line terminal) is a District fare plus 5 cents; that is to say, every passenger using the Q–2 line, whether or not using the service of the Transit Company between his home and the District terminal of the Q–2 line, must hold a weekly pass,

[5] The distances over the R–2 line and Q–2 line from their respective District terminals to the Pentagon are 3.5 miles and [illegible] miles, respectively. (R. 838.)

or he must pay a 10-cent cash fare or a token in addition to the 5 cents.

A uniform one-way fare of 10 cents is maintained by the Virginia lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including the Virginia installations,[6] with the single exception that the Alexandria line sells a book of 26 tickets for $1.95 or 7.5 cents each, which are good for transportation between its District terminal and the Army Annex.[7] (R. 839.)

The total personnel employed at the Virginia installations is upwards of 40,000, about 30,000 of whom are employed at the Pentagon. Somewhat less than half of this personnel resides in the District and travels back and forth each work day.

The above facts, together with a great deal of other evidence, were developed at hearings held in Washington, D. C., on three days in August

[6] From 12th and F Streets, N. W., (within two or three blocks of the terminals of all the Virginia lines) the distances over the Highway Bridge are about 3.7 miles to the Pentagon, 4.9 miles to the Navy Annex, 4 miles to the Army Annex and slightly farther to the Airport. Over the Memorial Bridge the distances are somewhat more than a mile longer. (R. 839.)

[7] Service is operated by the Arlington line between Rosslyn, Va., and the Pentagon and Navy Annex, and between the Memorial Bridge and the Navy Annex; and the Alexandria Line operates a service between the Memorial Bridge and the Navy Annex. On these lines the one-way fares are 5 cents. (R. 839.)

and four days in September, 1943. The hearings were presided over by one Commissioner and an Examiner and all the carriers, the State Corporation Commission of Virginia and the Army and Navy Departments took active parts in developing the record.

The position of the Army and Navy Departments was, generally speaking, that, for fare making purposes, the District base zone should properly and reasonably include the Virginia installations, and in support, they urged, among other things, that in view of the close proximity of the installations to the District and the mass movement of employees to and from them each day, they were as much a part of the business community of the District as if located within it; that, if the installations were physically located within the District, the local fares would apply and the mere fact that they were separated by political boundaries was no warrant from a rate-making standpoint for the much higher fares; and, further, that to the extent the service required operations outside the District, the differences in transportation conditions were more favorable than otherwise—peak loads and good highways without the interruptions met with in the City. (R. 842, 843, 11–16.)

On the other hand, the position of the Transit Company and other carriers was, generally speaking, that the operations to and from the Virginia installations in fact extended beyond the District

boundary; that the operations of the Transit Company's Pentagon bus line and of the other lines to the Virginia installations were of special nature and should be considered apart from that portion of the employee's travel over the other lines of the Transit Company between their homes and points of interchange; and that prior to the request made to the Commission to undertake its investigation into the fares, there had been negotiations through a regional committee and a level of fares suggested by the latter had been acquiesced in by the carriers.[8] (R. 845–848, 698–712.)

The Transit Company stressed particularly that it had undertaken its Pentagon operations, not upon its own volition, but upon the "plea" of the War and Navy Departments and as in the nature of a "war measure" or "war effort" (R. 700); and that the Departments were put on notice that there would be an extra fare of 5 cents.[9] (R. 710,

[8] The regional committee's proposal was for a fare of 13⅓ cents between the homes of the employees in the District and all the installations and via the lines of any of the companies serving the installations. The interline fare was to be evidenced by two coupon tickets sold in books of 12 one-way rides for $1.60. (R. 847.)

[9] In *Sou. Pac. Ry.* v. *Int. Com. Comm.*, 219 U. S. 433, it was held that the fact that the development of the lumber industry in the Willamette Valley had been encouraged by the maintaining of low rates which the railroad subsequently increased was not a factor that might be treated as supporting a conclusion that the increased rate was unreasonable. The position here of the Transit Company appears to be the reverse of this, that is, its position appears to be that, since

719.) The Company conceded, however, that, because of the position occupied by it in the District of Columbia, it was not without duty in the premises (R. 701) and, while doubtless it may have been willing to leave to the Virginia companies (R. 719) or others, the rendering of that part of the service between the Virginia installations and particular, limited, termini in the District, that is not to say that it would have been equally willing to leave to a competitor, or competitors, the rendering of the complete service between the Virginia installations and the homes of the employees in the District. And, furthermore, while doubtless the costs and yield of the entire operations of the Transit Company in the District were not material to the Commission's investigation (R. 671), it is manifest that the costs and yield of that part thereof consisting of the travel of the employees between their homes and points of interchange with busses operating to and from the Virginia installations were wholly material to the investigation.

In connection with the fact, urged by the Departments as warranting extension of the District base zone, that the Virginia installations are just across the boundary line, and the resulting fact

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the Departments were put on notice of the fares it expected to charge in undertaking the Pentagon operations and, since the fares were not protested and suspended when filed, this created an in-effect estoppel (*idem.*, p. 451) against a subsequent inquiry into their reasonableness.

that almost the whole passenger transportation involved (i. e., between the employees' homes in the District and the installations) is physically within the District, the Departments submitted a computation (R. 844) based upon information obtained from responses to a questionnaire of 9,500 employees at the Pentagon and Army Annex which showed that the average one-way distance travelled by such employees between their homes in the District and the installations was 6.21 miles, and that this was considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District. Based upon the above considerations and much other evidence of various sorts and kinds, the Departments contended that

> * * * anything higher than a District fare is unreasonable for the transportation of persons employed at the Virginia installations between their places of employment and their places of residence in the District; and that the collection from such passengers of fares higher than those for similar or longer rides in the District results in unjust discrimination and undue prejudice.

In addition to the reliance placed by the Transit Company on its position that it had undertaken the Pentagon operations on the "plea" of the War and Navy Departments and with full notice of the fares it intended to exact, that such

operations in fact extended beyond the District and were of special kind, the company relied particularly on an exhibit purporting to show that its Pentagon bus line was being operated at a loss. This showing, however, the Commission, upon analysis, found to be faulty and particularly in the respect that the exhibit (Ex. 89, R. 337–355) treated the operation of its Pentagon bus line as independent, whereas the traffic originated or terminated on practically every bus or streetcar line in the District and, consequently, the costs and yield were merged with those of the District operations and might not properly be considered as those of an independent operation (R. 845). Other objections of the carriers were that the extension of the District base zone to include the Virginia installations would encourage demands for similar action with respect to Government installations in nearby Maryland and to suburban communities in that State and that it would result in a difficult regulatory problem because of the alleged overlapping jurisdiction of the Interstate Commission and the District Commission.

Concerning the objections of the carriers last above mentioned, the Commission did not consider that they afforded grounds for its withholding action in the matter if action was otherwise called for on the record before it. "In

such circumstances," the Commission said (R. 850):

> * * * cooperation with State authorities is authorized by section 205 (f), part II of the Act. The record shows it to be the practice to maintain a uniform zone fare in certain other areas where the physical layout bears a general resemblance to that before us here, for example, between and within Kansas City, Mo., and Kansas City, Kans. Similarly, the zone fare in that situation is also subject to more than one regulatory authority.

Further with respect to the exhibits and studies of costs: As above noted, the Commission gave careful consideration to the Transit Company's exhibit of costs, although pointing to the fact that it was defective, or incomplete, in the respect particularly that it covered the company's Pentagon bus line operations only, whereas the traffic originated or terminated on practically every line operated by it in the District.[10] In this connection, however, the Commission stated, in effect, that, while cost of service was an important factor and it was giving due weight to the cost evidence in arriving at its conclusions, such cost was not the sole or controlling consideration; and,

[10] The respondents not only objected to the Commission's consideration of evidence showing their income and rates of return on investment or value, in which they were sustained (R. 124, 137, 671), but also stressed the difficulties of any segregation of revenues and expenses in connection with the particular traffic. (R. 146, 147.)

following this, it referred to the fact that, so far as passenger fares in urban communities are concerned, the usual and accepted basis is a group or zone adjustment "under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be." (R. 10.) Concerning the application of such a zone adjustment to the situation before it and the consideration of the "District basis of fares as the measure of reasonableness, the Commission later said (R. 848–849):

> The making of transportation rates or fares on a group or zone basis is not an uncommon practice. Measured by distance alone a certain degree of inequality is naturally inherent in such a system. The same rate or fare is charged for a short distance as well as for the longer ones within the same group or zone, and from a point in one group or zone to a point in another the rate or fare may be higher for a shorter distance than that between points in the same group or zone. The existence of situations of this kind does not in itself indicate any legal impropriety in such an adjustment of rates or fares. The important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn.
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> This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. * * * It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic. These roadways consist in large part of one-way traffic lanes, and they are without impediments commonly encountered on city streets, such as grade intersections, traffic lights, left turns, and resultant congestion. Large and expensive improvements and additions have also been made in the traffic arteries on the District side of the Potomac. Respondents have the use of these new and improved facilities in other operations conducted by them.

And further on the Commission said (R. 850):

> So far as the Alexandria and Arlington Lines are concerned, it is shown that they have reaped a particularly important advantage from this traffic, which makes for

economical and profitable operation. Formerly their traffic was unbalanced, but they now have an important volume of counter-flow traffic, an advantage which is rather unique in the business of urban or suburban transportation.

Other evidence considered and underlying findings made by the Commission will be referred to in the argument portion of this brief. By the ultimate, or concluding findings in its original report, the Commission found (R. 850, 851) that the existing bus fares and bus-streetcar fares of the Transit Company, applying between points in the District to the Pentagon, were unreasonable in instances[11] where they exceeded the District fare, and it prescribed fares not exceeding the District fares, including all transfer privileges, for future application; it found that the local fares of the Virginia lines between the Virginia installations and the terminals of those lines in the District were unreasonable to the extent they exceeded a fare of three tokens for 25 cents, subject to the proviso, however, that the present cash

[11] In those instances where they were less than the District fare, the Commission stated that they might be increased to such basis (R. 850). This would permit the Transit Company to increase its 5 cent fare now charged between the District terminal of its R–2 line and the Pentagon, but since, as above noted, the fare now charged by the Transit Company between the District terminal of its Q–2 line and the Pentagon consists of 5 cents plus a weekly pass, a token or 10 cents, this latter fare would have to be reduced to District basis.

fare of 10 cents per single trip might be continued;[12] and it found that the combination bus and bus-streetcar fares of the Transit Company and the Virginia lines for multiple trips between the Virginia installations and points in the District were unreasonable to the extent they exceeded "a fare of $1.60, valid for 12 one-way trips, equal to 13⅓ cents per one-way trip," which fare, including transfer privileges on the lines of the Transit Company, it prescribed as "reasonable for the joint service indicated" and which, it further found, might "be evidenced in the form of tokens or ticket book valid for 60 days or both."

2. FIRST COURT SUITS

In suits brought by the Transit Company, the other carriers and the State Corporation Commission of Virginia, under the Urgent Deficiencies Act to set aside the Commission's order of January 18, 1944, prescribing the fares found reasonable, the Court (District Court for the District of Columbia) enjoined and set aside the order on grounds, not bearing on the merits, but involving the provisions respecting the "commercial zone exemption" contained in section 203 (b) (7a) and (8) of the Interstate Commerce Act, and which provide in part that:

[12] As for the local fare of 7.5 cents now charged by the Alexandria line between its District terminal and the Army Annex, this fare, the Commission said, might be increased to the 8⅓-cents token basis.

> Nothing in this part * * * shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (a) taxicabs * * *; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft *nor, unless and to the extent that the Commission shall from time to time find such application is necessary to carry out the national transportation policy declared in this Act,* shall the provisions of this part * * * apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities * * * *provided that the motor carrier* engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce *is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;* * * * [Italics supplied.]

In its original report, the Commission, dealing first with subdivision (8) of the above and thereafter with subdivision (7a), had said and found (R. 843) that:

> As to the Transit Company and the Coach Company there is no doubt that we have

> jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District. In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is reasonably clear that their fares between the Virginia installations and the District are subject to our jurisdiction. In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203 (b) (7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration.

The District Court, in enjoining the Commission's order of January 18, 1944, held that the Commission had not made the findings necessary to support its conclusion that application of the provisions of the Act was necessary to carry out the national transportation policy; and it also held (R. 919) that, except as such application of the Act might be necessary to carry out the said policy, the transportation involved was exempted by subdivision (8), the Court holding in this connection that the Transit Company and other carriers were "also lawfully engaged in the intrastate transportation of passengers over the entire length of" their interstate routes.

Responding to the Court's holding of inadequacy of findings in its report to support its

conclusion that application of the Act to the transportation was necessary to carry out the national transportation policy, the Commission reopened its proceeding for further consideration and hearing. And, since the question as to the applicability of the exemption provision was closely related, the reopening was made to include that question. The further hearing was limited to the matters passed upon by the Court but the reconsideration provided for was unrestricted.

At the further hearing, counsel for the Transit Company and other carriers appeared specially (R. 777) and filed motions to discontinue the proceeding on the ground that the matters placed in issue were *res judicata* by reason of the District Court's holdings above referred to, including its holding of inadequacy of findings by the Commission to support its taking of jurisdiction as necessary to carry out the national transportation policy (R. 781). As to the latter holding, the position of counsel for the carriers was that, since that holding was legal, the Commission was foreclosed from reopening its proceeding and the only proper course was to take an appeal to the Supreme Court (R. 782). The presiding Commissioner overruled the motions only so far as necessary to enable the hearing to proceed, and they were subsequently passed upon and overruled by the Commission upon grounds fully stated in its supplemental report (R. 815–820).

At the further hearings, the carriers and the Virginia Commission offered no evidence but their counsel cross examined witnesses appearing in behalf of the Departments and the Commission's Bureau of Inquiry. In its supplemental report, (R. 813), issued June 12, 1944, the Commission dealt specifically with the matters involved in the Court's opinion and which were in issue for the taking of further evidence. It discussed at length and made subordinate findings in support of its conclusion that its taking of jurisdiction over the transportation involved was necessary to carry out the national transportation policy. In addition, it discussed at length the facts showing the extent to which the carriers were engaged in the intrastate transportation of passengers over their interstate routes and concluded that none of them was so engaged "over the entire length" of its interstate route, or routes, in question, and, accordingly, that the transportation involved was not excepted from the Act by the exemption provisions of section 203 (b) (8). It also concluded that the prescribed fares were not commutation fares, and that in any event it had power to compel their adoption, thus rejecting the contentions to the contrary urged by the carriers in the District Court but not passed upon by the court. In all other respects the Commission affirmed the findings and conclusions adopted in its prior report. Pursuant to the said findings and conclusions, as reconsidered and reaffirmed, the Com-

mission, by its order of June 12, 1944, (R. 827) which accompanied its supplemental report, prescribed for the transportation involved fares the same in level and other respects as those prescribed by its prior order of January 18, 1944.

3. SECOND COURT PROCEEDING

Thereafter the carriers and the Virginia Commission filed a motion, or complaint, in the district court, asking that the Commission's order of June 12, 1944, be enjoined and set aside and basing their prayer in part on allegations that the order was violative of the court's decree enjoining the earlier order and constituted "a refusal to follow the statutory provisions for appeal" and in part on general allegations of unlawfulness, that is, that the order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission" (R. 925). Following the filing of this motion, or complaint,[13] the United States filed with the court a motion for new trial and new judgment and the Commission filed an answer. In its answer, (R. 929) the Commission averred, among other things, that neither its order of June 12, 1944, nor its reopening of the proceeding, was violative of the district court's decree, but that, on the contrary, the action taken by it was responsive thereto; that, since it con-

[13] The pleadings of the carriers, of the United States and the Commission, are more fully described in the Jurisdictional Statement (pp. 9, 10, 12) filed herein.

sidered that the court was right in holding that it had not made adequate findings to support its conclusion that its taking of jurisdiction was necessary to carry out the national transportation policy, it would not have been justified in appealing therefrom; and that the course which it followed of immediately reopening the case did not constitute a failure to follow the statutory procedure, but, on the contrary, was squarely in line with its special purpose of expediting the court review of action of the Commission and also with the duty of the Government and the Commission not to burden the Supreme Court with unnecessary appeals.

In further answer, the Commission said that, as for the question of the applicability of the exemption provision of section 203 (b) (8) of the Act, while doubtless that question was legal, it was one of basic jurisdiction depending largely on fact, and that, where in such case, and as here, it was of the view that the record of facts, or its report, was in need of amplification or clarification, it believed that it was expected to take corrective action and not to appeal in such condition of the record; that any other rule (whether of *res judicata* or other doctrine designed especially to fit private litigation) would be contrary to the public interest and generally in conflict with the objectives of the special procedure for review of Commission action; that, even assuming that it was wrong in this, which it did not believe to be the

case (Cf. *Baltimore & O. R. Co.* v. *United States*, 24 F. Supp. 734, 735; *United States* v. *Griffin*, 303 U. S. 226, 228) its reopening of the proceeding directly responsive to the Court's holding of inadequacy of findings to support its taking of jurisdiction under the national transportation policy, was action, which upon the curing of the defect, would clothe it with jurisdiction; and that, since, contrary to the allegations of the carriers, it had made full and adequate findings curing such defect, it had thereby become clothed with the jurisdiction which it thereupon exercised.

As for the general allegations in the carriers' pleading, that the Commission's order was "unreasonable, arbitrary and contrary to the evidence and in excess of the statutory authority of the Commission" (R. 925), the Commission's answer fully and specifically denied those allegations. (R. 929–932.)

The United States, in addition to filing its motion, above referred to, filed a statement in answer to the motion (R. 933) or complaint, of the carriers and the Virginia Commission, in which the position taken by it was generally the same as that of the Commission and in which it stressed the fact that the reopening of the proceeding by the Commission to supply the findings which the court found lacking in its previous report was responsive to the court's opinion and that the Commission's action in this respect was its con-

sistent practice and entirely in harmony with court decision.

Following hearing on the carriers' motion and that of the United States (the case being submitted on the original and supplemental pleadings, evidence, argument and briefs, R. 949), the district court, on August 25, 1944, rendered its decision denying the motion of the United States and holding (Justice Arnold dissenting) that "the order of the Commission of June 12, 1944 (should) be set aside and its enforcement permanently enjoined; and on September 20, 1944, the court entered its findings of fact and conclusions of law and its decree permanently enjoining the order.

SUMMARY OF ARGUMENT

I. Contrary to the lower court's holding, the Commission's findings in support of its conclusion that the application of the Act to the transportation involved is necessary to carry out the national transportation policy, including its purpose of meeting the needs of the national defense, are entirely rational and adequate and fully substantiated by the evidence. The lower court's ruling that, in order to support the Commission's taking of jurisdiction as necessary to meet the needs of the national defense, it must have appeared that the government's war work was being materially affected, is manifestly wrong, in that such ruling would mean that the Commission

would have to have evidence of "real harm" already "done to the war effort" (R. 947) before it could in any such case assume jurisdiction to investigate the lawfulness of the carriers' rates and practices.

The evidence here and the Commission's findings show that the fares between points in the District and the Government installations were regarded as excessive both by high officials of the Army and Navy and by the employees at the Government installations; that, so far as most of the employees were concerned, such fares were important items in their budgets of monthly expense; that the fares were a source of dissatisfaction among the employees and an element entering into separation from government service at those points; that the work done at the Pentagon and other Government installations was vital to the war effort; and that the maintaining of a high morale among employees was essential. In addition and, certainly, of equal importance, is the showing by testimony and otherwise that responsible officials of the Army and Navy Departments considered that the Commission's assumption of jurisdiction over the fares paid by the thousands of workers employed at the Virginia installations was necessary to the war effort. It is apparent that, in order to be of that opinion, such officials need not have had before them facts and figures showing that the war effort was being materially affected, or for that matter have been

concerned with anything other than the necessity of maintaing employee morale and efficiency at a high level in order to ensure the best possible war effort at the national military headquarters. And it is also apparent that the statute in setting the standard of what is "necessary" in order adequately "to meet the needs x x x of the national defense" is aiming, not at a low, but at a high standard of needs.

The Commission is not, of course, given authority to reduce fares for the reason simply of their hampering effect on the war effort or for any reason other than that they are shown and found to be unreasonable or otherwise unlawful. But it clearly does not have to await evidence of real harm "done to the war effort" before it may take jurisdiction to inquire into the reasonableness of the fares involved.

A. While the Commission considers that its taking of jurisdiction here is necessary to carry out the national transportation policy and, while it is convinced that its conclusion to that effect is amply supported by findings and evidence, it is also of the view, contrary to that of the lower court, that the transportation involved does not fall within the so-called "commercial zone" exemption (Sec. 203 (b) (8)) from the Act, this because by its terms such exemption does not apply unless the motor carrier engaged in the interstate transportation involved

is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction.

The testimony of record of the President and General Manager of the Transit Company is that his company is not authorized to engage, and does not engage, in intrastate transportation in Virginia. He supports this by further testimony, that it is the company's intention to operate the Pentagon bus lines as a through express type of service between the District and the Pentagon building, and that, so far as he knows, those lines do not pick up, or discharge, passengers outside the District except at the Pentagon. There is no evidence or testimony disputing the testimony of the company's President and General Manager, but, on the contrary, his testimony is supported by statements and provisions in the company's tariffs and in applications made by the company to the Commission for temporary operating authority.

With respect to the Virginia lines, the testimony at the original hearing shows that the Coach Company performs no intra-District service whatever and that the Alexandria Line and Arlington Line perform only limited intra-District service. This testimony is substantiated by evidence introduced at the further hearing which consists of

orders of the Public Utilities Commission of the District. The orders specify the authorized routes and stops and establish that the Coach Company is not authorized to perform any intra-District transportation, that the Alexandria Line and the Arlington Line are not authorized to perform any intra-District transportation whatsoever so far as their Memorial Bridge routes are concerned and that, as for their Highway Bridge routes, they are also not authorized to engage in intra-District transportation, except between specified stopping points, one on inbound and one on outbound movements, opposite the Jefferson Memorial, and specified stops north of Maine Avenue. This leaves a very considerable area north of Maine Avenue within which the two companies are without authority to engage in intra-District transportation over their Highway Bridge routes.

Accordingly the factual situation is shown to be that the Alexandria Line and the Arlington Line, as well as the Transit Company and the Coach Company, are not engaged lawfully or otherwise in the intrastate transportation of passengers over the entire length of their interstate route, or routes. And having in mind that the two Lines do not fall within the language of the exemption even as to their Highway Bridge routes, it would seem that they are not exempt, particularly in view of the settled rule that exemptions from remedial legislation should be

strictly read so as not to narrow the statute's remedial processes without clear warrant in the language. *Piedmont & Northern Ry.* v. *Int. Com. Comm.*, 286 U. S. 299, 311.

II. The contention of the Virginia Corporation Commission, the Coach Company and the Arlington Line, that the Commission should have referred the proceeding initially to a joint board, is without merit. While with respect to operations of motor carriers not involving more than three States, the Act (sec. 205 (a)) directs the Commission to refer certain matters to joint boards, including "complaints as to rates, fares and charges of motor carriers," it does not require the reference to joint boards of proceedings as to such rates, fares and charges, instituted on the Commission's own motion. The allegations of the said appellees that the proceeding was instituted on complaint of the Secretary of War is contrary to the statements of the Commission, made both at the hearing and in its reports, that the investigation was instituted at the request of the Secretary of War. The Commission seldom institutes investigations on its own motion in the sense that the matter is one "hit upon" solely by the Commission and without its attention being called to the matter from the outside. It often institutes investigations which as a matter of procedure are on its own motion although in fact they are investigations which it has been directed to undertake by the Congress. Very

frequently other of its investigations on its own motion are preceded by letters from shippers, carriers, and communities, calling attention to alleged delinquencies or failures of the carriers. And, not infrequently matters of such sort are called to its attention by other departments or agencies of the Government.

The letters of the Secretary of War are of record and they show on their face that they are not complaints but are requests simply intended to ask the Commission to exercise its well known authority to institute an investigation on its own motion. It must be assumed that Congress is entirely familiar with the manner in which Commission proceedings arise, both complaint proceedings and those instituted on the Commission's own motion, and that, in providing for joint boards, it did not use the word "complaint" in a vague and indefinite way, but intended to give to the term its well recognized meaning of a complaint to which real rights are attached. *Cf. A. T. & S. F. Ry. Co. et al.* v. *United States,* 284 U. S. 248, 260. Here it is clear that the letter of the Secretary of War was not a complaint of such sort or other than a request leaving the Commission with full discretion in determining whether to undertake the proceeding.

Furthermore, the correctness of the Commission's action here in proceeding without referring the matter initially to a joint board is, it is believed, shown to be beyond question by the

consideration that the Transit Company's street railroad lines are essential to, and inseparable from, the motor carrier passenger transportation involved.

III. Contrary to the allegations of the appellees, the Commission, in prescribing the fares for the transportation here involved, that is, the individual fares over the Transit Company's own routes and the joint fares over the through routes between the Transit Company and the Virginia lines, acted entirely within its authority in requiring the application of such fares, not only to the Transit Company's motor bus lines, but also to its electric street railroad lines and points in the District reached by the latter lines. While, as stressed by the appellees, it was held in *Omaha Street Ry.* v. *Int. Com. Comm.*, 230 U. S. 324, that street electric passenger railroads were not included among the "railroads" to which the Act applied, the Commission's order involved in the case was entered prior to the 1910 amendment of the Act whereby it was provided that the Commission shall not "establish any through route, classification, or rate between street electric passenger railroads not engaged in * * * transporting freight * * * and railroads of a different character." And it is also to be noted that in the later related decision in *United States* v. *Village of Hubbard*, 266 U. S. 474, this Court, in holding that interurban electric passenger railroads were "railroads" subject to the Act and

Commission authority generally, said that this was shown by the fact that Congress, in enacting recent amendments, had limited the authority over them only in respect of certain of the Act's provisions.

The Commission, in its report, comments on both of these decisions but, although from its comment on the *Omaha case, supra,* it appears that it does not accept without reservation the holding in that case as now applying, it proceeds on the assumption that it does and in reliance on the fact that the Transit Company is not now, whatever it may have been in the past, a street electric passenger railway in the usual sense of that term. And, in this connection the Commission points out that the company now conducts bus operations throughout the District and in adjacent territory and that its bus and street car operations are inseparably commingled and blended, with a uniform fare applying to both and transfers interchangeable between street cars and busses. Because of these circumstances, the Commission states, effective exercise of its express authority to regulate the bus fares necessarily involves some regulation of the street car fares, and in support of this it points to the fact that the situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which this Court in *Wisconsin Railroad Comm.* v. *C. B. & Q. R. Co.,* 257 U. S. 563, said (p. 568):

> Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them.

Equally pertinent to the situation as the decision in the above case, are other decisions of the Court pointing to the effect on the construction to be given the Act which necessarily results from a commingling of operations so inseparable that the authority which the Commission plainly has over certain of the operations can only be effectively exerted by exercise of authority over the remainder. *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, 464. And with respect to the question of whether the Act may be reasonably read as embracing the Transit Company's street railroad operation, the decision in the *Omaha Case*, *supra*, makes plain that, even at the time of its rendering, the Commission's authority in terms extended unqualifiedly to common carriers by railroad and that it was only by virtue of construction that it was decided that it did not extend to street railroads.

Furthermore, it is also true that that decision in any application it might have subsequent to the 1910 amendments of the Act is left wholly uncertain by discussion at the end, from which it appears that counsel for the Government contended in effect that Congress in the 1910 amendments showed that it considered street electric

passenger railroads to be within the Commission's general authority by its action in exempting them from particular authority of the Commission only, namely, the authority (otherwise in terms given) to order the inclusion of such railroads in through routes and joint rates with railroads of a different character. While the Commission's order involved in the case was made prior to the 1910 amendments and, for that reason, the Court did not pass upon the question raised by the contention as to the effect of the amendment on the Commission's authority, the decision makes plain that the question was left open. And, in connection with that fact, the decision in the *Village of Hubbard Case, supra,* is clearly pertinent and significant. There, as above stated, the Court, in sustaining the Commission's action in assuming general authority over electric interurban passenger railroads, says that the correctness thereof was "confirmed by the action of Congress, which, in recent amendments, limited, in respect to certain subjects, the authority over them." Among the limitations upon the Commission's authority which the decision thereafter specifies is that contained in the 1910 amendments. The others specified in footnotes) are contained in certain of the many amendments and additions to the Act, enacted in 1920. All refer to street and suburban as well as interurban electric railways and all limit, in respect to certain subjects, the Commission's authority over street and suburban as well

as interurban electric railways.[14] The Court was not called upon to say whether the same exemptions of the street and suburban railways had like operation and effect as in the case of the interurbans, since the status of the former were not in issue, but it is difficult to reach any conclusion other than that the opinion leaves open to be gathered from its reasoning that such was in fact the case.

Moreover, the comparatively recent amendments extensively enlarging the Commission's authority over transportation, including those placing with it authority over motor carriers, cannot be disregarded in any consideration of the situation shown in this case. As found by the Commission, the motor bus operations involved, over which it has clear authority, are so commingled and blended with the Transit Company's street railroad operations in the rendering of the interstate transportation between points in (and throughout) the District and the Virginia installations that it cannot effectively exert authority over the bus operations without also exercising authority over the street railroad operations. Accordingly, even aside from the effect of the exemp-

[14] The opinion states (266 U. S. 474, 480) that the provisions "differentiated interurban electric railways from street and suburban railways by specific reference to each, although a distinction in treatment was made in only one case." But this statement, it is believed, is not intended to distinguish the street and suburbans from the interurbans in the particulars upon which the decision is reached.

tions of street railroads from certain of the Act's provisions only, this situation, coupled with the consideration that the Act, in its terms, unqualifiedly confers on the Commission authority over common carriers of passengers by railroad, supply, in and of themselves, not only reasonable, but most compelling warrant for reading the Act as vesting the Commission with the authority which it exercised. *United States* v. *N. Y. Cent. R. R.; supra.*

A. Contrary to the appellees' allegations, the Commission, in prescribing joint fares between points in the District and the Virginia installations for application over the through routes between the Transit Company's District lines and the Virginia lines, acted entirely within its authority. Since the Commission's authority to prescribe joint fares between the Virginia bus lines and the Transit Company's District bus lines is clear and express, the only question of substance is with respect to its authority to require application of the joint fares to the street car lines of that company and to points in the District reached by the latter lines. In connection with this question, the Commission, in its report, made the finding that

> Section 216 (e) of the Act authorizes us to require the establishment of through routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect,

> and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia lines are necessary and desirable in the public interest.

Since section 216 (e), so far as it deals with the establishment of through routes and joint fares, speaks only of motor carriers, it is manifest that the Commission's above findings are to be read in connection with its earlier findings that the Transit Company's motor bus and street car operations are so commingled and blended that in order to exercise its undoubted authority over the bus operations, it is also necessary for it to exert authority over the company's street car operations. By reason of that fact and in view of relevant decisions of this Court, the Commission concluded and held that it had "jurisdiction to require the application of the fares herein found reasonable to the combined bus-street car operations of the Transit Company and to those (combined) operations and the bus operations of the Virginia lines" (R. 842). The Commission had, just prior to its finding that, because of the blending of its operations, the transit Company was no longer a street electric railway in the usual sense, made mention of the fact that, in contrast with like provisions in Part I (relating to railroads) and Part III (relating to water carriers), there was no provision in section 216 (e) of Part II limiting, or inhibiting, it from including electric railroads in through routes and

joint fares with motor carriers. And this fact, the Commission pointed to, it is apparent, to show that, while, on the one hand, there was no inhibitory language, on the other hand, consideration of the statute and its purposes and policy as a whole, together with the situation of commingled forms of transportation service to which it here had to be applied, afforded every reason for giving to its language a workable construction.

Furthermore, as found by the Commission, through routes between the Transit Company and the Virginia lines were already in effect and through fares by combination were also in effect and in active every day use. And, in such situation, other authority in addition to that respecting the establishment of through routes and joint fares is placed with the Commission by section 216 (e), in that in the fore part thereof it is provided substantially that whenever "the Commission shall be of the opinion that any individual, or joint rate, fare, or charge demanded, charged or collected" by any motor carrier, or carriers, "in conjunction with any common carrier or carriers by railroad and/or express * * * is or will be unjust or unreasonable * * * it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum * * * thereafter to be observed * * *." In the instant case the Commission had before it and found unreasonable

the through fares, by combination, between the Virginia installations and points in the District charged by the Virginia bus lines in conjunction with the Transit Company in its capacity, not only as a motor carrier, but also as a common carrier by street railroad, and it seems evident that under statute's language, the Commission in prescribing the reasonable fares to be thereafter observed, was as much authorized to prescribe joint fares as through fares by combination of separately published fares of the companies concerned. With through routes already in effect between the Virginia lines and the Transit Company as a carrier by railroad, the Commission had ample authority, and, in fact, was required, to prescribe reasonable through fares of some sort to replace those found unreasonable (Cf. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 667), and no good reason appears why it should not have prescribed joint through fares as it was authorized to do and did do.

Accordingly, even if the Transit Company's street railroad service could be regarded as distinct and separable from its bus service, still the Commission was authorized to make the joint fares which it prescribed apply to the Company's service of the former kind and, when it is considered that the Company's two kinds of service were not in fact separable but were so commingled that the Commission could not practicably exercise its indisputable joint fare authority with

respect to the bus service without also making the fares apply to the street car service, it is clear that the Commission had sound grounds and reason for reading the statute as clothing it with the authority which it exercised. *Wisconsin Commission Case, supra; N. Y. Cent. R. R. v. United States, supra.*

Concerning the joint fares in their application over the through routes as made by the Virginia lines and the bus lines of the Transit Company, there is the difference that the Commission is expressly authorized to establish through routes and joint fares between motor carriers, *if finding the same to be in the public interest.* And here, even though through routes and through fares were in effect, it may well be (Cf. *Virginian Ry. Case, supra,* 667) that a finding of public interest was a prerequisite to the prescription of joint fares. But, as above shown, the Commission made such finding, and, while, in doing so, it did not distinguish between the bus operations and street car operations of the Transit Company, this was because it had found them to be inseparably commingled and, therefore, was treating them as "combined bus-street car operations."

IV. The appellees are wrong in their view that the fares prescribed by the Commission are commutation fares within the meaning of the statute's provision (Sec. 22, Part I, sec. 217 (b), Part II) that "Nothing in this Act shall prevent * * * the issuance of * * * commutation

passenger tickets"; and they are also wrong in their view that the provision precludes the Commission from prescribing commutation fares such as fall within its meaning.

1. Presumably Congress, in dealing with commutation service and tickets, has reference to the commutation service and fares which were developed by the stage coach and railroads and later provided for by the electric roads and motor carriers. In all this time, the Commission says, the term commutation traffic "has been applied generally to suburban and interurban but not to urban transportation, at least not to transportation throughout an urban area." And it also says that "Another historic characteristic of commutation fares is that they apply only to a particular class of traffic." Contrasting the service and fares here involved with such generally recognized commutation service and fares, the Commission points out that it had found that "the transportation here under consideration is essentially urban in character" and, in effect, that the token and weekly pass fares in existing use were not fares for a particular class of traffic only, but were rather the predominant type of fare customarily maintained in the area, the single fare being the exception. Based on these considerations and the fact that the fares prescribed by it were of the same type, the Commission concluded that the latter could not "properly be regarded as commutation fares." That the Commission is

right in this seems evident. While the interstate transportation, over which it alone had authority, happened to be of government employees between their homes and the Virginia installations, the Commission had found, upon ample evidence, that the transportation was properly to be treated as embraced within the District urban area, and the mere fact that it was interstate cannot, in the matter here under consideration, be regarded as distinguishing it from the other like intra-District transportation of government employees and others between their homes and places of daily employment.

2. Even assuming the fares prescribed are commutation fares, the Commission acted within its authority. The thought that the statute precludes the Commission from prescribing commutation fares is based, apparently, upon the theory that, although the Commission may regulate such fares once they have been established by a carrier, it may not impose its judgment on the carrier in the matter of initiating their use. So far as concerns the Transit Company, the type of fares prescribed by the Commission is obviously new only in the sense that they are prescribed for the particular interstate transportation, and it seems unlikely that, with respect to the question of whether the type of fares prescribed does in reality trench on the company's managerial initiative, the statute, in the situation here, takes cognizance of mere State lines. On the other

hand, except for the ticket book of the Alexandria line, the Virginia lines do not have in present use the type of fare prescribed, although such type of fare is, of course, applied to the Transit Company's part of the through transportation, that is, between the homes of the passengers and the District terminals of the Virginia lines. However, entirely aside from the consideration that the type of fare in question is in established use for most of the transportation involved, it is manifest that section 22 does not in terms preclude the Commission from prescribing commutation fares. In fact, its language does not bring to mind the meaning ascribed to it at all, and the fact that it is not intended to preclude the Commission from prescribing commutation fares appears confirmed by the extrinsic consideration pointed to in the Commission's report.

V. The fares prescribed by the Commission are neither confiscatory nor in any way unreasonable but, on the contrary, are fully supported by the evidence as in every respect just and reasonable. While the carriers rely on the charge of confiscation, their bills of complaint do not make compliance with the requirements in respect of particularity of allegations. *Beaumont, S. L. & W. R. Co.* v. *United States,* 282 U. S. 74, 88–89. Moreover, the evidence advanced in support of the allegations plainly fails to meet the tests laid down by this Court. *St. Joseph Stock Yards* v.

United States, 292 U. S. 38. The Transit Company was the only one of the carriers to introduce cost evidence and its exhibit is confined exclusively to the costs and revenue under existing fares of that part of its Pentagon operations consisting of the service performed by its two Pentagon bus lines between their District terminals and the Pentagon building. That is to say, the exhibit makes no cost and revenue showing whatever of the remaining part of the Company's Pentagon operations consisting of the transportation of Pentagon employees between their homes in the District and the said District terminals of its two Pentagon bus lines. This evidence, it is clear, does not meet the tests laid down by the Court. Cf. *Northern Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 604.

Certain cost testimony and cost computations were introduced by witnesses for the Departments. No cost evidence other than its exhibit, however, was introduced by the Transit Company, and, as stated, the other appellee carriers introduced no cost evidence whatsoever.

Concerning the evidential support for the reasonableness of the fares prescribed by the Commission, there was the cost evidence, above referred to, and, to that evidence, the Commission gave due weight (R. 846). In addition the record showed that the carriers had experienced a large increase in traffic during the war emergency al-

though their costs had also increased. Further, there was evidence respecting the "value of the service," that is, that its cost was out of proportion to its value to the employee passengers and more than they should be called upon to bear. And, in particular, there was the consideration that "the usual and accepted basis for passenger fares in urban communities is a group or zone adjustment under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be" (R. 846). These zone fare adjustments have their counterparts in freight rate adjustments, such as the so-called group rates to common markets which frequently "blanket" extensive coal, lumber, agricultural or other producing areas and the intradistrict switching rates maintained at, or around, many large cities, such as the 40-mile Chicago switching district, within which the same charge is made regardless of the commodity and regardless of distance, save that the charge for a three-or-more-line haul is more than that for a two-line haul and the charge for a two-line haul is more than that for a one-line haul. *Illinois Com. Comm.* v. *United States* (*Chicago Switching Case*), 292 U. S. 474. In situations such as in the latter case distance is disregarded in favor of other transportation considerations and those considerations are "within the competence of the Commission" (*idem.*, p. 486).

Similarly in the case of zone fare adjustments, the same fare is charged regardless of distance and, as the Commission's report states, "the important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn." With respect to these considerations the Commission says that it is unable to accept the contention of the carriers that a proper demarcation line for the application of District zone fares is the mere political boundary between the District and Virginia, and it concludes that the Virginia installations just beyond the boundary should reasonably and properly be included within the District area or base zone. This conclusion the Commission supports by full findings of facts and reasons (R. 849, 844), and all amply supported by the evidence of record, including evidence that the average distance traveled by employees at the Pentagon and the Army Annex between their homes in the District and the installations is 6.21 miles, which is considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District (R. 844).

The Transit Company contended in the Court below that what the Commission's order requires is, not the establishing of reasonable fares, but

the extension of its District fares to include its Pentagon operations; that its fares were fixed by the District Commission based on its operations within the District; and, apparently, that for that reason, they did not afford a reliable evidential basis for the fares prescribed by the Commission. It is true that, while the record showed that the Transit Company had experienced a large increase in traffic since its fares were fixed, neither this showing nor other evidence of record furnished a basis for accurate knowledge of whether the Company's fares were, or were not, just at a proper level. Nor did the Company's cost exhibit or any other of its evidence show just what was the contribution to its revenues made by its Pentagon operations. But, in order that the Transit Company's fares in established use be treated by the Commission as having sound probative value in support of the fares it prescribed, it was not necessary that the Commission have accurate knowledge that the former were fixed at just the proper level. *Virginian Railway Case, supra,* 272 U. S. 658, 665. In the latter case (which presents close analogies to the instant case), the Commission's order involved prescribed the same level of rates on coal from certain mines in a mining district as the group rates which were in effect from other mines and, in attacking the order, the Virginian urged that

the existing group rates were not proper standards of reasonableness; that they were competitively depressed rates and made in disregard of all usual transportation considerations. Despite these contentions, the Court considered that it was entirely within the Commission's competence to treat the group rates as having good probative value and, in this connection, it said that "It was shown that a huge coal traffic moves from this territory, under like operating conditions, at the blanket rates which were voluntarily established by the other carriers to serve mines similarly located."

With respect to the fact that the joint fares prescribed by the Commission as maxima reasonable fares for application over the through routes between the Transit Company and the Virginia lines were fixed at a higher level than those prescribed for "one-line-hauls" over the Transit Company's own routes: Clearly the carriers cannot advance such fact as a grievance. The revenue from the fares has to be divided and, as illustrated in the *Chicago Switching Case, supra,* it is common practice in like, or analogous, situations to make a greater charge for "two-or-more-line-hauls" than for "one-line-hauls." Cf. *Georgia Comm.* v. *United States,* 283 U. S. 765, 767.

ARGUMENT

I. The Commission, in finding that the carriers' operations were not exempted from the Act, correctly ascertained and applied the facts, and, in concluding that the application of the Act to such operations was, in any event, necessary to carry out the national transportation policy, it made full and complete findings and gave sound reasons in support

As has been shown in the preliminary statement, the lower court, in enjoining the Commission's order, based its action on the holdings (1) that the transportation involved was exempted by section 203 (b) (8) of the Act and (2) "that the facts found by the Commission do not support its conclusion that its taking of jurisdiction is necessary to the national transportation system." With respect to the first holding the district court said (R. 944):

> As to the first question whether the carriers are in intrastate commerce over the entire length of their lines, practically no additional evidence was introduced before the Commission. This court has already found that the Commission was in error in its conclusion of law upon the facts and it is unnecessary to discuss this question any further.

Concerning the question of the adequacy of the Commission's findings to support its taking of jurisdiction as necessary to carry out the national transportation policy, the court stated that the Commission based its conclusion chiefly

on the finding that the employees of the Pentagon were dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, the court said that "apart from the fact that the dissatisfaction of the employees with the fares charged is ground for finding that their reduction is necessary to carry out the national transportation policy, there is a mere scintilla of evidence to support this finding." Following this statement, the court discusses certain of the evidence and apparently concludes that it is not substantial. With respect to the second ground, the court said:

> As to the importance of the Pentagon in the prosecution of the War, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers.

By this latter, it is apparent, as noted in Justice Arnold's dissenting opinion, that the majority opinion proceeds in the view that, as matter of law, no necessity could exist for the assuming of jurisdiction to carry out the national transportation policy, including the meeting of the needs of the national defense, unless and until it is es-

tablished by evidence that the war work of the government is being, or already has been, "materially affected." That this cannot be a sound view of Congress' purpose seems evident, and it seems equally evident that the lower court is wrong in its view of the evidence upon which the Commission acted and that it is, in fact, assuming authority to weigh that evidence.

As noted in the opinion, the Commission's supplemental report, in analyzing the evidence showing the need for assuming jurisdiction (R. 817), refers to the dissatisfaction of the employees at the Virginia installations with the fares charged by the Transit Company and other carriers. The report, in referring to the evidence taken at the original hearing, states substantially that most of the employees at the installations are in a relatively low income group [15] and that the existing fare situation is an element entering into separation from the Government service at those points; [16] that a representative group of employees testified to the prevalent dissatisfaction with the existing fares, [17] which testimony was corrobrorated by a number of personnel supervisors; [18] and, in effect, that a further consideration not to be ignored was the fact that the Secretaries of the War and Navy Depart-

[15] Ex's. 21–22, R. 969–970; Ex. 35–36, 38, R. 981–983.
[16] Ex, 23, R. 970; Ex. 37, R. 982.
[17] R. 367, 369, 371, 372, 373, 375, 376.
[18] R. 377–380; 380–384; 384–386; 386–388; 389–391.

ments themselves considered the matter of the Commission's assuming authority over the fares to be of sufficient importance to be brought to its attention. With respect to the evidence taken at the further hearing, the report reads:

> On further hearing, the Departments adduced evidence which further emphasizes the importance in the conduct of the war of the work performed at the Virginia installations.[19] Offices of the Secretary of War, the Chief of Staff of the Army, and the heads of the services immediately concerned with the conduct of the war are located in the Pentagon and the Army Annex. Important services of the Navy Department similarly concerned are housed in the Navy Annex. In brief, these buildings may be characterized as the nerve center of the war effort in this country.

Following its findings with respect to the evidence, the supplemental report sets forth the declaration of the national transportation policy[20]

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[19] R. 794–800; 800–803.

[20] "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with

and thereafter discusses and applies the same as follows (R. 818):

> Since subdivision 7 (a) of section 203 (b) provides, in effect, that despite the exemption of subdivision (8) of transportation within a "commercial zone" from the provisions of the act, the exemption may be removed whenever we find the same to be "necessary to carry out the national transportation policy," it necessarily follows that the subjecting of such transportation to the act's regulatory provisions, including those with respect to rate or fare regulation, is specially recognized by the act as action that may serve the said national policy, including its specified end of developing, coordinating and preserving a transportation system "adequate to meet the needs of the commerce of the United States * * * and of the national defense." Having this in mind, and read in light of its earlier statements of objectives, including that of encouraging the establishment of reasonable charges for transportation services, it is plain that the "end" specified by the national policy of transportation system adequate to meet the needs of commerce and of the national de-

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the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. * * *"

fense, has reference not only to adequacy of service but also to transportation services rendered at reasonable fares and charges. It is further plain that, in view of the very nature of the transportation which it is contemplated that we may remove from the exemption from regulation in furtherance of the national transportation policy, that we must, in effectuating such policy, necessarily give consideration to the circumstances of individual transportation units and to the needs of their patrons.

It is clear that in order to ensure for the transportation here considered fares that do not exceed a level operating against the full efficiency of the important services performed at the Virginia installations in the conduct of the war, it is essential that the fares be subjected to regulation. As above said, it is considered and has been shown that the existing fares are having an effect detrimental to such services, and there can be no assurance against the charging of excessive fares except by subjecting them to regulation.

No agency other than this Commission is empowered to regulate the fares in issue. It is a well established rule that even where the Federal Government does not occupy the field, the States are without power to regulate charges for interstate transportation. *Minnesota Rate Cases*, 230 U. S. 352, 399–401, and cases there cited.

That the above gives to the national transportion policy, not only a rational, but a sound and

necessary construction and application seems manifest. There is an abundance of evidence that the work done at the Pentagon and other government installations in Virginia is vital to the war effort. The evidence is clear that, so far as concerns most of the employees at those installations, the fares they must pay twice daily for transportation between their homes and places of work are important items in their budgets, and, coupled with this, there is the further showing that dissatisfaction is in fact prevalent among the employees with the existing level of fares. In addition and, perhaps, of most importance, is the showing by testimony and otherwise that high officials of the Army and Navy Departments considered that the Commission's assumption of jurisdiction over the fares paid by the thousands of workers employed at the Virginia installations was necessary to the war effort. It is apparent that, in order to be of that opinion, such officials need not have had before them facts and figures showing that the war effort was being "materially affected", or for that matter have had in mind more than the necessity of maintaining employee morale and efficiency at a high level in order to ensure the best possible war effort at the "national military headquarters." And it is also apparent that the statute in setting the standard of what is "necessary" in order adequately "to meet the needs * * * of the national defense" is aiming, not at a low, but at a high standard of needs.

Furthermore, the lower court's holding that, in order to support the Commission's taking of jurisdiction as so necessary to meet the needs of the national defense, it must appear that the government's war work is materially affected would, as stated by Justice Arnold (R. 947), mean that the Commission "must withhold its hand until real harm has been done to the war effort." But this, in its practical effect and working, is not different from saying that, in order to support the Commission's jurisdiction as necessary to meet the needs of the national defense, the evidence must be such as to show that jurisdiction should have been earlier taken. The national transportation policy, similarly as any other provisions of the Interstate Commerce Act, must be read having in mind that the Commission is clothed with a quasi-legislative authority to project its judgment into the future and, when so read, it is clear that the Commission is authorized and expected to anticipate any such material hampering of the Government's war work. The Commission is not, of course, clothed with authority to reduce fares for the reason simply of their hampering effect on such work or for any reason other than that they are shown to be unreasonable or otherwise unlawful. But it plainly does not have to await evidence of real harm "done to the war effort" before it may take jurisdiction to inquire into the reasonableness of the fares involved.

A. Extent To Which the Carriers Are Engaged in Intrastate Transportation Over the Interstate Routes Involved

With respect to the question of whether the operations of the Transit Company and other carriers are in fact exempted from the Act by section 203 (b) (8), the Commission, in its supplemental report (R. 819), covers more clearly and with considerably more detail than in its original report its reasons, with the supporting facts, for its view that the said carriers are not engaged in intrastate transportation over the entire length of their interstate routes and, therefore, do not fall within the exemption. As a background for this, the Commission says:

> As above shown, the provisions of section 203 (b) (8) exempting commercial zones from regulation do not apply unless "the motor carrier engaged in such transportation of passengers over regular or irregular routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction."
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> * * * * *
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> In order that passenger transportation be intrastate, it may be said that a first, or basic, requirement is that it be physically purely intrastate, that is, transportation of passengers from place to place exclusively within the confines of a single State; it

> might be that, even then, the passengers, or certain of them, were in fact in course of interstate travel, but, in order to make a start with the proposition that the transportation is intrastate, it must, as stated, first meet the basic requirement of being transportation of passengers from place to place exclusively within one State. Cf. *Hanley* v. *Kansas City So. Ry. Co.*, 187 U. S. 617, 620; *B. & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166, 171; *Yohn* v. *United States*, 280 F. 511.

Following the above the Commission details certain of the evidence showing that, so far as concerns the Transit Company, it was not engaged in any intrastate transportation in Virginia, the Commission saying, that at the original hearing the company's president and general manager testified that his company was not engaged in any such intrastate operations; "that, so far as he knew, there was no pick-up or discharge of passengers by the company's Pentagon bus lines outside the District of Columbia other than at the Pentagon Building; that the company had no authority to use the lines for short haul of passengers in Virginia; and that it was its intention to operate between certain points in the District to the Pentagon, conducting 'a through express type of service to serve the War Department Building.'" (R. 187–190.)

This testimony the Commission thereafter confirms by referring to the company's tariffs and

showing that the tariff for its R–2 route contains the rule that "No intrastate passengers accepted" (R. 188) and that the tariff for its Q–2 route contains rules to the effect that passengers are not permitted to board or alight at any points in Virginia except the Pentagon Building (R. 1022). Further confirming the testimony of the company's president and general manager, the Commission quotes from the company's applications for temporary operating authority in which it states that it does not intend to engage in intrastate transportation in Virginia, and also from a letter from the company's president seeking extension of temporary authority in which it is stated, among other things, that the company "has no operating rights for intrastate operations in the State of Virginia from any Virginia authority." (R. 1018.) In concluding with respect to the Transit Company the Commission says:

> In view of the foregoing, it seems to us that the Transit Company is not engaged in any intrastate operations in Virginia, either authorized, or unauthorized, by that State, over its interstate routes between the Pentagon and the District.

With respect to the Virginia lines, the Commission first says (R. 821):

> At the original hearing, officers of the Virginia companies gave testimony concerning the intra-District operations of those companies, from which we concluded,

> as above stated, that the Coach Company performed no intra-District operations and the Alexandria Line and Arlington Line only limited operations. Evidence presented by the Department on further hearing establishes the correctness of these conclusions. This evidence consists of orders of the Public Utilities Commission of the District, which specify the authorized routes and stops.[21]

Following the above, the Commission says that the orders show that the Coach Company is authorized to operate over all four bridges between the District and the Pentagon, but that it is not authorized to perform any intra-District transportation, and the evidence shows that it is not engaged in such transportation (R. 442–443); that, as for the Alexandria Line and the Arlington Line, the orders show that each is authorized to operate over the Memorial and Highway Bridges, but that, so far as concerns their Memorial Bridge routes, they are not authorized to engage in any intra-District operations. In the next paragraph the Commission says that the testimony confirms generally that the actual op-

[21] These orders of the District Commission (R. 1049–1063) constituted important new evidence. While there was testimony at the original hearing respecting the operations within the District of the Alexandria Line and the Arlington Line, it was general and not furnishing the information on which the Commission could have made the clear statement of those operations which was enabled by the new evidence.

erations of these two companies conform to the authority granted them (R. 5; 449–450; 447).

Down to this point, therefore, the Commission's findings show that the Transit Company is not engaged in any intrastate transportation in Virginia, either authorized, or unauthorized; that the Coach Company is not engaged in any intra-District transportation, either authorized or unauthorized; and that the same is true of the Alexandria Line and the Arlington Line so far as concerns their Memorial Bridge routes. This leaves for consideration only the Highway Bridge routes of the two latter lines and, as to those routes, the Commission says that the District Commission's orders show that the said lines

> are also not authorized to engage in such (intra-District) transportation, except between authorized stopping points, one on inbound and one on outbound movements, opposite the Jefferson Memorial, and authorized stops north of Maine Avenue. In other words, the companies are prohibited from engaging in any intra-District transportation in the area north of Maine Avenue. The distance between the intersection of Fourteenth Street and Maine Avenue, S. W., and the terminal of the Alexandria Line at Twelfth Street and Pennsylvania Avenue, N. W., is about 1 mile over the route of that company. The only authorized stops south of Maine Avenue are those opposite the Jefferson Memorial.

The Commission then follows this with the conclusion:

> Accordingly in view of the fact that the Alexandria Line and the Arlington Line are wholly without authority from the Public Utilities Commission of the District of Columbia to engage in intra-District transportation over their Memorial Bridge routes and that, over their Highway Bridge routes, they are without such authority in the area within the District above described, and in view of the further fact that the testimony confirms generally that their actual operation conforms to the authority granted them, we are of the opinion that the said lines are not engaged in intrastate transportation, either authorized, or unauthorized, by the District, over the entire length of their interstate routes herein involved.

It seems plain that, based on the facts therein stated and the wording of the statute, the Commission is correct in its above conclusion that the Alexandria Line and the Arlington Line are not engaged in intrastate transportation over the "entire length" of their interstate routes. The word "entire length" contained in the statute must be given some effect and there seems to be no good reason for not giving to them their usual and ordinary meaning. Judged by the bills of complaint, there appears to be a tendency to consider that, because the interstate trans-

portation here involved is in a sense local, its exemption from federal regulation is a primary aim of the statute instead of an exception to its purpose to provide for regulation of all interstate transportation. But any such view puts out of mind the familiar rule that, since the Interstate Commerce Act, as remedial legislation, should be liberally construed, exemptions from its operation should "by the same token" be strictly read so as not to narrow the Act's remedial processes without clear warrant therefor. *Piedmont & Northern Ry.* v. *Int. Com. Comm.*, 286 U. S. 299, 311.

ISSUES NOT PASSED UPON BY THE LOWER COURT.

The remaining issues involved in this case were not considered and determined by the lower court, but that that fact does not preclude this Court from passing upon them, if it believes such course to be warranted, is shown by a number of decisions, including importantly *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, 463–464;[22] *United States* v. *Louisiana*, 290 U. S. 70, 72–73; *Group of Investors* v. *Milwaukee R. Co.*, 318 U. S. 523, 529. The circumstances in this case which it is believed afford special warrant for the Court's passing on the remaining issues are:

[22] In this case, while the lower court set aside the Commission's order on the sole ground that the Commission's jurisdiction had not been authoritatively invoked, this Court, in reversing the lower court, passed upon the remaining issues.

1. That, in addition to the questions of statutory authority above discussed, the bills of complaint raise various other questions with respect to the Commission's statutory authority which, if determined separately by the lower court and against the Commission, could involve several further appeals to this Court and thus bring about a final determination of the case in piecemeal fashion.

2. That a fundamental purpose of the Urgent Deficiencies Act is to expedite the review of the Commission's rate and other orders affecting the nation's transportation service. *United States* v. *Griffin*, 303 U. S. 226, 233; *Chicago Junction Case*, 264 U. S. 258, 270.

3. That the Commission, having determined that the fares involved are excessive, the benefit of that determination should inure to the Government's war effort as soon as possible, if the carriers' various allegations that the Commission exceeded its statutory authority are unfounded.

II. The Commission was not required to refer the matter initially to a Joint Board

The contention is made by the Virginia Corporation Commission, the Coach Company and the Arlington Line that the Commission should have referred the proceeding initially to a joint board pursuant to section 205 (a) of Part II of the Act which, so far as pertinent here, reads as follows:

> (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits * * * and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: * * *.

It will be seen from the above that reference to joint boards of "complaints as to rates, fares and charges of motor carriers" is required of the Commission when the operations involve not more than three States. For the purpose of Part II, the term "state" embraces the District of Columbia. Section 203 (a) (8). The operations here are, therefore, between two States and the question is whether the matter was one within the matters described as "complaints as to * * * fares and charges of motor carriers." It is evident, it is believed, that it was not.

In connection with its contention that the Commission proceeding was one instituted on complaint, the bill of the Coach Company (R. 872)

alleges that "at the hearing the Commission announced that the investigation was instituted on complaint of the Secretary of War * * *" and later that "The Commission issued a report and order reciting the complaints." Since the Commission both at the hearing (R. 2) and in its reports (R. 835, 817) stated that the investigation was instituted "at the request of the Secretary of War * * *," the said allegations of the bill serve to emphasize the distinction both in fact and practice between "letters of request" and "complaints"[23] as that word is used in the Act. It will be realized that it is seldom that the Commission institutes an investigation on "its own initiative" in the sense that the matter is one "hit upon" solely by the Commission and without its attention being called to the matter from the "outside." The Commission frequently institutes investigations which as a matter of procedure are

[23] Sec. 204 (c) of Part II of the Act reads:

"(c) Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint."

"on its own initiative" although in fact they are investigations which it has been directed to undertake by the Congress, such as the investigations instituted by the Commission under the Hoch-Smith Resolution.[24] Very frequently other of its investigations on its own motion are preceded by letters from shippers, carriers, communities and the like, calling alleged delinquencies or failures of the carriers to its attention. In fact, matters of such sort may be called to the Commission's attention by other Departments of the Government, such as the Departments of Commerce, Agriculture and others; and, if resulting in, or in part responsible for, investigations instituted by the Commission on its own motion, it would not seem that such investigations, could properly be regarded as complaint proceedings in any sense intended by Congress in providing for joint boards.

The letter from the Secretary of War (R. 959, Ex. 11) which first brought the present matter to the Commission's attention was an ordinary letter without any of the characteristics of a complaint.[25]

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[24] In its 1925 Annual Report to Congress, page 38, the Commission, after setting forth the Hoch-Smith Resolution, says: "Pursuant to that resolution we instituted, on March 12, 1925, *upon our own motion*, a general investigation, docketed and entitled No. 17000, *Rate Structure Investigation*."

[25] In fact, this letter did not even meet the requirements of an informal complaint such as prescribed in the Commission's General Rules of Practice. *Cicardi Bros. Fruit & Produce Co.* v. *Atlantic C. L. R. Co.*, 221 I. C. C. 67, 69.

The Commission's present General Rules of Practice are not different than they long have been in their general requirements with respect to formal complaints as, for example, their requirements for correct designation of the defendants and for filing of additional copies for service on the defendants (Rules 26–28). The letter of the Secretary of War, not only had none of the characteristics of a formal complaint, but was not accompanied by additional copies for service. Moreover, the carriers did not demand that the letter of the Secretary of War be treated by the Commission as a formal complaint, although they necessarily were aware of the existence of such letter as a result of the informal negotiations that took place prior to the institution of the investigation. They did not demand that copies be served upon them, nor did they file any formal answer such as contemplated by Rule 35 of the Commission's General Rules of Practice.

But, entirely aside from the fact that the letter of the Secretary of War and its mailing did not meet the tests in respect of complaints laid down by the Commission's rules, it seems apparent that it was intended by the Secretary (and was so treated) as simply asking the Commission to exercise its well known authority to institute an investigation on its own motion.

It must be assumed that Congress is entirely familiar with the manner in which Commission

proceedings arise, both complaint proceedings and those instituted on the Commission's own motion, and that, in providing for joint boards, it did not use the word "complaint" in a vague and indefinite way but intended to give to it its well recognized meaning. While Section 204 (c),[26] quoted in footnote 22, *supra*, provides that the Commission may dismiss a complaint when of the opinion that it does not state reasonable grounds for investigation, this provision is not different in substance from the like provision in section 13 of Part I, which has long been recognized as attaching real right to complaints filed with the Commission. This is shown by the decision in *A., T. & S. F. Ry. Co. et al.* v. *The United States,* 284 U. S. 248, where the Court had before it an order of the Commission requiring a general reduction in grain rates on a record which had been made prior to the severe financial depression of the early 1930's and where the Court, in referring to a petition of the carriers for rehearing in light of the effect on their revenues, held that the change in conditions was such that it amounted to a new economic level and that by reason of that (p. 248):

> The petition was not an ordinary petition for rehearing, but was of the nature of a supplemental bill, presenting a new and radically different situation, which had

[26] See also Section 216 (e).

supervened since the record before the Commission had been closed.

By this recognition of the distinction between the usual petition for rehearing (with respect to which the Commission has broad discretion) and a supplemental bill (i. e., a complaint), it is plain that the Court recognized that there were rights attached to complaints filed with the Commission which placed them in an entirely different category from petitions resting on the Commission's discretion. While the letter of the Secretary of War involved here was not a petition for rehearing, it is equally clear that it was not a complaint or other than a request leaving the Commission with full discretion in determining whether to undertake the proceeding.

With respect to the Commission's practice in connection with rate proceedings instituted under Part II on its own motion, the Commission has regarded such proceedings as distinct from complaint proceedings and has never considered that they were required to be referred to joint boards,[27]

[27] Food Products, Pittsburgh, Pa., to New Jersey, 19 M. C. C. 463; Paper and Paper Articles from Canton, N. C., to Atlanta, Ga., 21 M. C. C. 89; Southwest Freight Lines, Commodities from Coffeyville, Kans., 22 M. C. C. 251; Periodicals, etc., Savannah, Ga., to Alabama and Tennessee, 30 M. C. C. 391; Classes and Commodities from Omaha to South Dakota, 32 M. C. C. 735; Groceries and Store Supplies from Twin Cities to Wisconsin, 33 M. C. C. 597; Milk, Canned, L. T. L., between Baltimore, Md., and York, Pa., 34 M. C. C. 382; Building, Roofing, and Paving Material between Baltimore, Md., and York, Pa., 32 M. C. C. 761.

though it believes it is left to its discretion to do so where there are reasons making such course desirable. And finally it should be said that it is not believed that failure to observe the joint board procedure is a fatal error when in fact the final judgment is rendered by the Commission. Under sections 17 and 205 of the Act, upon the filing of exceptions by any party to the recommended order of a joint board, a proceeding automatically goes to the Commission for disposition. These provisions also authorize the Commission to set aside the recommendation of a joint board whether or not any exceptions are filed thereto. It is, therefore, thought the joint board procedure may properly be characterized as an aid to, not a substitute for, action by the Commission. Therefore if any error was committed, which it seems apparent was not the case, it was merely of a procedural nature and does not affect the merits. See *Rex Oil Co. Contract Carrier Application*, 17 M. C. C. 324; *Lincoln Tunnel Applications*, 12 M. C. C. 184; *Gable Transport Co., Inc. Common Carrier Application*, 19 M. C. C. 527; *Magee Truck Lines, Inc., Common Carrier Application*, 28 M. C. C. 386.

III. The Commission correctly applied the Act with respect to the street electric operations of the Transit Company

Contrary to the allegations of the appellees, the Commission, in prescribing the fares for the trans-

portation here involved, that is, the individual fares over the Transit Company's own routes and the joint fares over the through routes between the Transit Company and the Virginia Lines, acted entirely within its authority in requiring the application of such fares, not only to the Transit Company's motor bus lines, but also to its electric street railroad lines and points in the District reached by the latter lines.

While, as stressed by the appellees, it was held in *Omaha Street Ry.* v. *Int. Com. Comm.*, 230 U. S. 324, that electric street railroads were not included among the railroads to which the Act applied and that, therefore, the Commission was without authority over the fares of a street railroad operating between Omaha, Nebr., and Council Bluffs, Ia., there have been, since that decision, many amendments and additions made to the Act extensively broadening and enlarging the Commission's authority. Entirely aside from the fact that it is shown in the opinion in that case that the decision might have been different if the Commission's order had been made after, instead of before, the 1910 amendment whereby it was provided that the Commission shall not "establish any through route, classification, or rate between street electric passenger railroads not engaged in * * * transporting freight * * * and railroads of a different character", the Commission's authority has, by repeated amendments, been enlarged, not only in respect of carriers by railroad, but also so

that now its regulatory authority is complete over water carriers and, in addition, extends to motor carriers. And, too, the Commission is expected to effect reasonable coordination in the rendering of the several forms of transportation service subject to the Act. In view of these great changes, it seems evident that the decision in the *Omaha Case, supra,* predicated, as it was, on the ground, broadly stated (p. 337) that street railroads did not fall within the Act's objectives,[28] does not fit in with the provisions of the Act as it stands today and, particularly, that it does not fit in with the situation shown here of the Transit Company rendering interstate service in the dual capacity of a carrier by motor bus and a carrier by street railroad.

As indicated above, the question of the Commission's authority over the Transit Company's street electric railroad service, as such, is "tied in" closely with the question of its authority to establish through routes and joint fares between

[28] The decision, in holding that "the word 'railroad' (as used in the Act) cannot be construed to include street railroad," emphasizes that street railroads are not fitted to obey the commands made by the Act upon every railroad subject thereto. But under the Act, as it stands today, it is doubtful that that criterion has like force; for there may be carriers by railroad which are such only in limied respects and as to particular transportation service. *Union Stock Yards Co.* v. *United States*, 308 U. S. 213; and there may be carriers by water which have "hybrid" characteristics. *United States, I. C. C., Seatrain Lines et al.* v. *Pennsylvania R. Co.*, decided January 29, 1945.

the Virginia Bus Lines and the Transit Company in its capacity as a carrier by street railroad. This latter question will be presently separately dealt with but is mentioned here because the Commission, in its report, discusses the two questions together.

At the outset of its discussion (R. 841), the Commission states that its jurisdiction over electric railways was considered by the Court in the *Omaha Case, supra,* and also in *United States* v. *Village of Hubbard,* 266 U. S. 474; and, after mentioning the fact that in the first case it was held that street railways were not comprehended within the meaning of the word "railroad" as used in the Act, it makes the comment (R. 841):

> * * * Our decision had been rendered prior to the amendment of June 18, 1910, which provided that the Commission was not empowered to establish any through route or rate, fare, or charge between street electric passenger railways not engaged in transporting freight and railroads of a different character. This provision is now embodied in section 15 (3) of the Act.

Directly following the above the Commission continues (R. 841–842):

> In the second case above cited the Court held that section 1 of the act conferred general jurisdiction upon us to regulate interurban electric railroads engaged in interstate passenger operations. We had theretofore

exercised such jurisdiction, respecting which the Court said:

"The correctness of the Commission's action in assuming jurisdiction over the interurban roads is confirmed by the action of Congress which, in recent amendments of the Act to Regulate Commerce, limited, in respect to certain subjects, the authority over them."

The Court then proceeded to point out the subjects referred to, in respect of which our jurisdiction had been limited and, among them, was the authority to require the establishment of through routes and joint rates. These limitations are contained in part I of the act. There is a similar limitation in respect of through routes and joint rates in section 307 (d) of part III. The latter part was added to the act in 1940. But there is no similar limitation in section 216 (e) of Part II. Part II was added to the act in 1935.

The Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. It conducts bus operations throughout the District and in adjacent territory. The total mileage operated by its busses and street cars is about the same. These operations are commingled and blended. A uniform fare applies to both and transfers are interchangeable between street cars and busses. About 62 percent of the gross revenues of this com-

pany is derived from street-car operations and 38 percent from bus transportation.

In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's street-car fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said (p. 588):

"Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

Accordingly, we hold that we have jurisdiction to require the application of the fares herein found reasonable to the combined bus-street car operations of the Transit Company and to those operations and the bus operations of the Virginia Lines.

Referring first to the Commission's reference, above shown, to the holding in the *Omaha Case* and its comment, that its decision involved in the case had been rendered prior to the amendment of June 18, 1910, respecting its power to establish through routes and rates between street electric railways and railroads of a different character, this comment, it is apparent, shows that

the Commission was familiar with the fact that the Court's opinion in the *Omaha Case* left open the question of the effect of the amendment on its general authority over street railways, but, at the same time, the Commission's later discussion of the *Village of Hubbard Case, supra,* shows that its said comment was more particularly directed to the question, also before it, of its authority to establish through routes and joint fares between the Virginia Bus Lines and the Transit Company as a carrier by street electric railway. For there the Commission, after stating that among the limitations upon its authority to which the Court referred in the latter case [29] was the limitation upon its authority to establish through routes and joint rates, says, in effect, that while such limita-

[29] In the *Village of Hubbard Case, supra* (which held that the Commission was shown to have general authority over the interurban electrics by the fact that Congress in recent amendments had limited its authority over them in certain respects only), the Court refers in the text to the provision in the Act of June 18, 1910, that "the Commission shall not * * * establish any through route, classification, or rate between street electric passenger railways * * * and railroads of a different character." In footnotes, the opinion refers to the several 1920 amendments whereby street, suburban and interurban electric railways are exempted from particular authority of the Commission. Taking the fact that the 1910 amendments (Sec. 15 (3), I. C. Act) speaks of street electric railways and was involved in the *Omaha Case* together with the fact that the 1920 exemptions include street railways as well as interurbans, it is manifest that the Commission, in referring to the "limitations" upon its authority, was speaking of them in their operation with respect to street railways, or in their full operation, including street railways.

tion was contained in Part I of the Act (Section 15 (3)) and there was a like limitation in Part III (relating to water carriers), there was no similar limitation in Part II (relating to motor carriers). The limitations referred to will be discussed under the next title, but it will be noted (R. 842) that, immediately succeeding its reference thereto, the Commission follows with its statement that the Transit Company is not now a street electric passenger railway in the usual sense and also that all that it thereafter says as to the effect of the commingling and blending of the Company's motor bus service with its street railway service relates, not only to the question of its authority over the Transit Company's street railway service as such, but also to the question of whether, in prescribing joint fares between the Virginia Bus Lines and the Transit Company, it might deal with the latter's operations as "combined bus-street car operations."

Giving consideration to the paragraph in which the Commission states that the Transit Company is not now, although it may have been in the past, a street electric railway in the usual sense of that term: That fact is manifest and also the fact that, by reason thereof, it is no longer a carrier of the kind to which the holding, as made in the *Omaha case, supra,* applies. The Company is no longer undertaking to render even its intra-District service as a purely street railroad service,

but "throughout the District" is relying as much on its motor bus operations as on its street car operations to enable it to fulfill its common carrier obligations. As in effect said by the Commission, while its jurisdiction over the company's motor bus operations is not open to question, those operations are for all practical purposes of rate, or fare, regulation inseparably commingled with the Company's street car operations. Pursuing this further, the Commission continues:

> In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said (p. 588):
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> "Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

The appellees argued in the court below that the Commission's reference to the *Wisconsin Case* is inapposite here because, in that case, the Commission in any event had the express authority (sec. 13 (3) and (4)) which it exercised, but this

is to urge that the above reasoning of the Court was without purpose. And the said argument also assumes both that the carrier here involved is of the same kind as the Court had before it in the *Omaha Case, supra,* and that the statute remains unchanged. Moreover, the Court has in cases other than the *Wisconsin Case, supra,* pointed to the effect on the construction to be given the statute that necessarily results from a commingling of operations so inseparable that the authority which the Commission plainly has over certain of the operations can only be effectively exerted by exercise of authority over the remainder.

The Commission's order involved in *United States* v. *N. Y. Cent. R. R.* (*supra*), 272 U. S. 457, required the appellee to provide switching service at the public terminal of a barge canal, such service being incidental to the moving of carload traffic between the terminal and points on the appellee's lines and the lines of its connecting railroads. One of the grounds asserted as rendering the order invalid was that the authority which the Commission possessed to require the appellee to undertake the service was limited to interstate transportation while its order required the rendering of such service both with respect to interstate and intrastate commerce. In answer to this the Court said: (p. 464)

> The Commission having jurisdiction over the carriers and the facilities by which the

transportation is carried on, the question is narrowed to whether its jurisdiction extends to the entire current of commerce flowing through this terminal although intrastate in part. When we consider the nature and extent of the commingling of interstate and intrastate commerce, and the difficulty of segregating the freight passing through the terminal, we think it clear that Congress in employing such broad language as "the Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated" intended to confer upon the commission power to regulate the entire stream of commerce. Where, as here, interstate and intrastate transactions are interwoven, the regulation of the latter is so incidental to and inseparable from the regulation of the former as properly to be deemed included in the authority over interstate commerce conferred by statute. This was the view of the state court. (Citing cases.) An interpretation of the statute which would in practice require the segregation of all shipments in interstate commerce would make compliance with the commission's orders impossible and defeat the purpose of the Act.

In connection with the above case, it should be had in mind that, in contrast with the situation there, the Commission's order in the present case in no way trenches on State (District of Columbia) authority. If ever there was a situation of

interrupted interstate transportation where, although one "leg" of the journey was interstate, the other "leg" was intrastate, and yet the whole plainly and indisputably constituted interstate transportation, it is demonstrated by the situation that existed here of thousands of persons travelling twice every day between their homes in the District and their daily work at the installations in Virginia. That the Commission's authority attaches to the purely bus fares applying to this stream of interstate transportation is clear, and it seems equally clear that the commingling of bus and street railroad transportation is such as to require a conclusion that the Commission is possessed of authority over the street car, as well as the bus, fares, if the Act's language may be reasonably said to warrant that conclusion. And, with respect to that question, it will have been noted that the decision in the *Omaha Case, supra* (230 U. S. 324) makes plain that, even at the time of its rendering, the Commission's authority in terms extended unqualifiedly to common carriers by railroad and that it was only by virtue of construction (p. 327) that it was decided that it did not extend to street railroads.

Furthermore, as already mentioned, although it was held in the *Omaha case* that street railroads were not included among the railroads to which the Act applied, any application that the holding might have subsequent to the 1910 amendments was left uncertain. Near the close of the Court's

opinion (p. 338) it is shown that counsel for the Government made the contention that the amendment of June 18, 1910,

> * * * shows that Congress considered that street railroads were under the jurisdiction of the Commission inasmuch as it then provided that "the Commission shall not establish any through route, classification or rate between street electric passenger railways not engaged in * * * transporting freight * * * and railroads of a different character."

Answering this contention after mention of counter contentions of opposing counsel, the Court's opinion reads in part:

> This section of the Act of 1910, however, having been passed after the order was made by the Commission, Nov. 27, 1909, is not before us for construction and, manifestly, cannot be given a retrospective operation, though the Government insists that it should be given a prospective operation and in its brief contends that "even if the Commission's order was without lawful authority at the time it was made (Nov. 27, 1909) the amendment of 1910 either ratified it altogether, or, at least, validated it for the future," * * *. There was no such stipulation here, and there being nothing to show that Congress attempted an express ratification, and it being open whether the amendment was intended to confer a jurisdiction not previously given, the motion of

the Government to make the order of November 27, 1909, effective from June 18, 1910, cannot prevail.

In short, the above quotation from the *Omaha Case, supra,* together with the *Village of Hubbard Case, supra,* show that, in Part I of the Act, the Commission has a statute to carry out, which while declaring that its provisions apply to common carriers of passengers or property by railroad, excepts electric roads, whether street, suburban or interurban,[30] from only a few of those provisions. The significance of this is shown in the above opinion of the Court relating to street railroads. And, in the *Village of Hubbard Case,* 266 U. S. 474, such exemptions of interurban railroads are said to confirm the Commission's authority over them in other respects. The Court was not called upon to say whether the same exemptions of the street and suburban railroads had like operation and effect, since these were not in issue, but it is difficult to reach any conclusion other than that the opinion leaves open to be gathered from its reasoning that such was in fact the case. For example, while the Court (p. 478) makes mention of the decision in the *Omaha Case, supra,* this mention simply refers to the decision as suggesting a distinction between interurban railroads and urban or suburban street railroads. It does not

[30] The *Village of Hubbard Case*, 266 U. S., at p. 480, sets out in a footnote these exemptions of street, suburban and interurban electric railroads.

refer to the decision as one now applying and, of course, the decision itself leaves open the question of the effect of the 1910 amendment, excepting street passenger railroads from particular authority of the Commission only. The 1920 Act expressly provided for other like exceptions of street, suburban and interurban railroads, and, by virtue of the Court's reasoning with respect to the interurban roads (alone in issue in the case) the conclusion seems inescapable that such exceptions from particular Commission authority, applying equally to street and suburban railroads, shows Congress' intention to include them in the Commission's authority in other respects.

It is true that since the *Omaha Case, supra*; the Commission had not asserted such authority, but the Commission's failure in this respect, it is manifest, has not changed the Act. *Union Stock Yard Co.* v. *United States,* 308 U. S. 213, 224. Moreover, the comparatively recent amendments extensively enlarging the Commission's authority over transportation, including those placing with it authority over motor carriers, cannot be put out of mind in any consideration of the situation disclosed in this case. As emphasized by the Commission, the motor bus operations of the Transit Company, over which it has clear authority, are so inseparably commingled and blended with the Company's street railroad operations in the rendering of the interstate transportation between points in (and throughout) the District

and the Pentagon building that it cannot effectively exert authority over the Company's bus operations without also exercising authority over its street railroad operations. And certainly, even aside from the effect of the 1920 amendments above discussed, this situation, coupled with the consideration that the Act, in its terms, gives the Commission authority over common carriers of passengers by railroad, supply, in and of themselves, not only reasonable, but most compelling, warrant for reading the Act as vesting the Commission with the authority which it exercised. *Wisconsin Railroad Commission Case, supra; New York Central Barge Canal Case, supra.*

A. The Commission acted within its authority in prescribing joint fares between the Virginia Lines and the Transit Company

It should be kept in mind in connection with the appellee's allegations that the Commission exceeded its authority in requiring the establishment of through routes and joint fares that this narrows down to a question of such authority as between the Virginia Lines and the street electric lines of the Transit Company. The routes of the Transit Company itself between points in the District and the Pentagon Building are not "through" in the sense of the Act of a through route between separate carriers and the fares which that company is required to establish over such routes are not, of course, joint fares; and

the Commission's authority to prescribe joint fares between the Virginia Lines and the bus lines of the Transit Company seems beyond dispute. Therefore, the question is, as stated, the narrow one of whether the Commission, while having full authority to prescribe the joint fares between the Virginia Lines and the Transit Company to points in the District which are served by that Company's bus lines, nevertheless, is without authority to require that such fares be established with respect to passengers having to use its street car lines to reach their homes. In its original report (R. 850) the Commission makes the finding that

> Section 216 (e)[31] of the Act authorizes us to require the establishment of through

[31] Sec. 216 (e) reads, so far as pertinent here:

"* * * Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle * * * in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge * * * thereafter to be observed, * * * and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative, without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: * * *"

routes and joint fares whenever deemed by us to be necessary or desirable in the public interest. Through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia Lines are necessary and desirable in the public interest.

Section 216 (e) is set forth in the footnote below and it will be seen that, so far as it deals with the establishment (initially) of through routes and joint fares, it speaks only of motor carriers. However, it has been shown under the preceding title that the Commission's findings that the Transit Company was no longer a street electric railway in the usual sense because of its commingled street car and bus operations and its other findings in support of its general authority over the fares for the street car part of the Transit Company's operations are also directed to the support of its authority to prescribe joint fares between the Virginia Bus Lines and the Transit Company in respect of the latter's street car, as well as its motor bus, operations within the District. And it has also been shown that in connection with those findings the Commission makes special reference to its through route and joint fare authority over motor carriers under section 216 (e), pointing out that, unlike the similar provisions in Parts I and III of the Act, it contains nothing expressly inhibiting it from establishing

through routes and joint fares between motor carriers and street electric railways.

In short, the Commission, after first pointing out that there was nothing in section 216 (e) expressly inhibiting it from establishing through routes and joint fares between motor carriers and street electric railways, then in effect further points out that, in any event, the Transit Company was no longer a purely street electric railway, but in fulfilling its same carrier obligations rendered a motor bus, as well as a street car service, these operations being commingled and blended and the Company's uniform fare applying to both with transfers interchangeable without distinction as between motor busses and street cars. Predicated upon all these considerations, facts, and circumstances, the Commission concluded (R. 842) that it had authority "to require the application of the fares (including the joint fares) herein found reasonable to the *combined bus-street-car operations* of the Transit Company, and to *those operations* and the bus operations of the Virginia lines." (Italics supplied.)

Furthermore, there is more to section 216 (e) than its provision authorizing the Commission to establish through routes and joint fares between motor carriers, and the Commission's further findings, shown above, that "through routes are now in effect" calls for consideration particularly of the earlier provisions of section 216 (e)

(footnote 30, *supra*) giving the Commission express authority over the individual or joint fares charged or collected by a motor carrier, or carriers, in conjunction with any carrier by railroad, by express or by water for transportation in interstate commerce and expressly empowering it, if finding them unreasonable, unjustly discriminatory, etc., to determine and prescribe the lawful fares to be thereafter observed. With through routes already voluntarily in effect between the Virginia Bus Lines and the Transit Company in its capacity of "combined" motor bus and street railroad operator, there was obviously no occasion for the Commission to establish them, and, as for the fares which were also already in effect over the through routes, while they were not joint but were through fares by combination of the individual, or so-called "local", fares, nevertheless, the statute authorized the Commission, if finding them unreasonable or otherwise unlawful, to determine and prescribe the lawful fares to be thereafter observed, including, so far as the language is concerned, joint through fares quite as much as through fares by combination of locals or proportionals. While joint fares contemplate that through routes exist between the carriers this is met by the Commission's finding that through routes are in effect. And, in any event, it seems evident that the language

of the statute authorizes both an order of the Commission prescribing joint fares[32] and one prescribing the same level of fares but leaving it to the carriers to establish through fares by combination either of local or of proportional fares. With any of such kinds of fares in effect the car-

[32] The carriers are assured of equitable divisions of joint fares since the Commission is given the authority to determine and prescribe reasonable divisions in cases of joint fares between motor carriers and carriers of other kind. Sec. 216 (f). As for the Transit Company's right as a railroad not to be "short-hauled" provided for by section 15 (4) of Part I: While the Pentagon bus line of that company is competitive with the Virginia bus lines, section 15 (4) does not protect it from "short-hauling" by motor carriers and Part II contains no provision whatsoever in respect of "short-hauling." It is true that in the case of through routes and joint rates between motor carriers for the transportation of freight, the Commission permits such carriers to cancel the joint rates and close the routes and that it does this on the ground that, since the Act, in contrast with passenger transportation, places no duty on motor carriers to establish through routes for transportation of freight, they should be allowed to close those that may from time to time be established. However, the Commission does not consider that the closing of a through route takes place simply upn the cancelling of joint rates leaving higher combination rates in effect. It does not permit of the cancelling of joint rates except as it is shown that the combination rates left in effect are just and reasonable (*Rocky Mt. Lines, Inc.*, 31 M. C. C. 320), or upon the establishing of proportionals equalling the amount of the joint rates (*idem.*, I. & S. M-2370, *Rayons Between Trunk Line & New England Territory*), or unless the carriers make satisfying showing that the through routes are closed, say, by provision in their tariffs to that effect. *Planters Nut & Chocolate Co. Case*, 31 M. C. C. 719, 721; Cf. *Beaman Elevator Co. Case*, 155 I. C. C., at p. 317.

riers would have to observe them until authorized to do otherwise.

The above is referred to principally having in mind the joint fares prescribed by the Commission in their application to the Transit Company's street car service, that is, in the view and on the assumption that such service must, for purposes of the statute, be regarded as distinct and separate from its motor bus service. With through routes already voluntarily in effect between the Virginia Lines and the Transit Company's street car lines and with through fares by combination in effect and active use over the through routes, it is clear that the Commission, having found such existing through fares unreasonable, had ample authority to prescribe through fares of some sort to replace them (Cf. *Virginian Ry.* v. *United States,* 272 U. S. 658, 667), and, too, at the precise level found reasonable and prescribed by it in the form of joint fares. True the Commission's authority under section 216 (e) to *establish* through routes and joint fares is limited to motor carriers but, in the circumstances here of through routes and through fares *already in effect* and active use between motor carriers and a carrier of different kind, section 216 (e) vests the Commission with other express authority—the authority, if it finds the existing fares to be unreasonable, to determine and prescribe the lawful fares to be thereafter observed. There is nothing here that confines the Commission to the prescription

of through fares by combination and, in fact, the authority to prescribe joint fares is clearly given (Cf. *River Terms. Corp. Class and Commodity Rates*, 14 M. C. C. 542, 549) and no good reason appears why it should not have been exercised. Footnote 30, *supra*.

Accordingly, even assuming that the Transit Company's street car service should be regarded as distinct and separable from its motor bus service, still it was entirely within the Commission's authority to make the joint fares which it prescribed apply to the Company's service of the former kind. However, as vividly pictured by the Commission's findings the two kinds of service utilized by the Transit Company are not in fact distinct and separable but are so "commingled and blended" by the Company in meeting its carrier obligations in the District that exercise by the Commission of its indisputable joint fare authority with respect to the Company's bus service necessitated exercise also of like authority over its street car service. And this fact affords compelling reason for reading the statute as vesting the Commission with such authority even if it were not an authority in any event clearly placed with the Commission. *Wisconsin Railroad Commission Case, supra; New York Central Barge Canal Case, supra; United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 119, 121; *Wickard* v. *Filburn*, 317 U. S. 111, 118.

Concerning the joint fares in their application over the through routes as made by the Virginia Lines and the bus lines of the Transit Company, there is the difference that the Commission is expressly authorized to establish through routes and joint fares between motor carriers, *if finding the same to be in the public interest.* And here, even though through routes and through fares are in effect, it may well be (Cf. *Virginian Ry.* v. *United States,* 272 U. S. 658, 666) that a finding of the public interest is contemplated by the statute. But, as will have been noted, the Commission does make such finding. In making the finding, the Commission does not distinguish between the bus lines and electric lines of the Transit Company, but this is because of its conclusion, above shown, that it had authority to require application of the joint fares to the "combined bus-street-car operations" of the Transit Company and the bus operations of the Virginia Lines.

The appellees contended in the court below that the Commission's finding that through routes were in effect between the Virginia Lines and the Transit Company, was incorrect but it is difficult to believe that the contention was seriously advanced. The question of whether such through routes were open and in effect is, it will be seen, intimately related to the question, above referred to, of whether the persons employed at the Virginia installations and travelling twice daily between those points and their homes in the District

over the Virginia Lines and the District lines of the Transit Company were moving in continuous interstate travel. And, as there said, if ever there was a situation of interrupted transportation where, although one "leg" of the journey was physically interstate, the other "leg" was physically intrastate, and yet the whole indisputably constituted interstate transportation (*B. & O. R. Co.* v. *United States,* 24 F. Supp. 734; *B. & O. S. W. R. Co.* v. *Settle,* 260 U. S. 166), it is demonstrated by the situation that existed here of thousands of passengers transported twice every day between their homes in the District and their daily work at the installations in Virginia. The interruptions consisted of little more than the change from one vehicle to another, and certainly there can be no dispute as to the continuing intention of the passengers to make the journey through to the place of their daily work. And the same facts and circumstances, well known to the carriers concerned (R. 839, 840) in accepting the daily stream of traffic, makes manifest that through routes for the accommodation of the traffic were, as found by the Commission, already in effect.[33] *Sprout* v. *South Bend,* 277 U. S. 163.

[33] Even though it may be that the intent of a passenger to travel interstate is not as reliable a criterion as that of a shipper in respect of freight (*Virginia Stage Lines, Inc.*, 15 M. C. C. 519, 522), the knowledge of the carriers is a different "thing" (*idem*), and where, as here, the carriers' passengers are (in thousands) being daily transported interstate be-

With respect to the latter question, the existence of through routes does not, of course, have to be shown by express arrangement, but may be implied. *St. Louis S. W. Ry.* v. *United States*, 245 U. S. 138, 139. Even with respect to through routes for freight traffic, a single shipment moving on a through billing recognized by the car-

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tween their homes in the District and their places of work in Virginia, it is manifest that the carriers cannot escape either knowledge thereof or interstate regulation of the entire continuing transportation between homes and daily work. Certainly, whatever may be said as to intent, the fact of continuing interstate transportation in such huge volume (R. 839, 844, 845) is good evidence. And, if this needs the support of precedent, it is shown in Commission reports. In *Garden State Line — Purchase — Adolph Hollander*, 25 M. C. C. 243, 244, the Commission, in holding that the vendor was not an interstate motor carrier, based its decision in part on the fact that it had no arrangements for sale of through tickets or for interchange of traffic, but it also said:

"Nor does it appear from the record that *any of the passengers* transported by him commenced their journey at or were destined to points outside New Jersey." (Emphasis supplied.)

And in No. MC–F–2296, *Gulf, M. & O. R. Co.—Control; Gulf Transp. Co.—Purchase—Jesse R. Lamberth*, decided April 25, 1944 (not printed in reports), the Commission said with respect to the interstate status of the vendor:

"* * * While vendor has made no special effort to develop interline business and does not sell tickets beyond his own line, it is clear that he has transported passengers to York and that, at the latter point, such passengers have used services of other motorbus companies in travelling to points outside of Alabama. Likewise, the evidence is convincing that persons from York have used his services to Mobile and then have travelled via other bus lines to such Gulf Coast points as Pensacola, Fla., and Gulfport and Pascagoula, Miss. * * *"

riers is generally regarded as conclusive evidence of the existence of the through routes. *Brownyard* v. *Union Pac. R. Co.*, 148 I. C. C. 444; *Beaman Elevator Co. Case, supra*, p. 315. With respect to passenger traffic there is not the same need, as in the case of inanimate freight, for carrier documents and records relating to through transportation. Joint fares and through tickets constitute, of course, conclusive showing of the existence of through routes for passenger travel. But it is obvious that, without such specific arrangements therefor, through routes may exist and be open at the combination rates or fares; and the Commission considers that, because of the statute's mandate that the rates for any transportation—any traffic in fact moving—shall be just and reasonable (Cf. *Atchison, T. & S. F. Ry.* v. *United States*, 279 U. S. 768, 776), the carriers should be held to a high degree of care in the matter of through routes and, where the prospects are that traffic is moving thereover should either take steps to definitely close the routes or make certain that the combinations of locals are not excessive for the through transportation. *Rocky Mt. Lines, Inc., supra*, p. 321.

It is true that the fifteen thousand or more employees at the Pentagon building who travel twice daily between their homes in the District and the Pentagon (R. 839–840) must, when using routes via Transit Company Lines and the Virginia Lines, pay higher fares than when using the com-

petitive routes available over the Transit Company's lines alone, but, even if such higher fares effected a so-called "commercial" closing of the through routes, that would not be the equivalent of a legal closing (*Virginia Ry. Case, supra,* p. 666; *Atchison, T. & S. F. Ry. Case, supra,* pp. 774, 776; *Beaman Elevator Co. Case, supra,* 155 I. C. C., at p. 315) and here the showing is that, despite the higher fares, several thousand of the said employees do in fact use the former routes daily (R. 840). In view of the fact that, as above said, the through billing on a single shipment of freight, recognized by the carriers concerned, is generally regarded as conclusive evidence of the existence of a through route, the said showing made here would appear to be ample to establish the through routes both as actually and legally open through routes.

The decision in *United States* v. *Munson S. S. Line,* 283 U. S. 45, relied on by appellees, is not applicable here. It involved the question of "a common arrangement" between a water carrier and rail carrier within the meaning of the statutory provisions of section 1 of the Act. The evidence respecting through routes under sections 15 (3) and (4) and 216 (e) has been largely a matter of rulings of the Commission, although, as shown above, for the most part either based on decisions of this Court or referred to with approval. Moreover, in the matter of through

routes between railroads, there is the consideration, not present here (*Crown Coach Co.* v. *Mo.-Ark. Coach Lines*, 27 M. C. C. 746, 748), that the carrier's statutory right to its "long-haul" is generally involved. *Atchison, T. & S. F. Ry. Case, supra; Virginian Ry. Case, supra.*

IV. The appellees are wrong both in their contention that the fares prescribed by the Commission are commutation fares and in their contention that the Commission is without authority to prescribe commutation fares.

The appellees contended in the lower court that the fares prescribed by the Commission were commutation fares and that the Commission was not empowered to prescribe fares of such kind. This was a contention not reached and passed upon by the lower court and the Commission, not having dealt in its original report with the questions involved, discusses them at some length in its supplemental report (R. 823), showing that the fares prescribed by its order are not commutation fares and also that it, in any event, had full authority to prescribe commutation fares.

As stated in the report, section 22 of Part I, relating to commutation fares, is made applicable to motor carrier by section 217 (b) of Part II, and, while in the original Act of 1887, it read: "That nothing in this Act shall apply to * * * the issuance of * * * commutation tickets * * *," it was subsequently amended to read: "That nothing in this Part shall prevent * * *

the issuance of * * * commutation passenger tickets." The Commission points out that statements in decisions rendered by it before the amendment, and also in decisions rendered prior to the time that it was given any authority whatsoever over rates or charges for the future, which statements have been inadvertently repeated or paraphrased in reports of recent years, may account in considerable measure for the thought that it is without authority to prescribe commutation fares.

The Commission, in its report, first explains why the fares prescribed by its order may not properly be regarded as commutation fares and, in this connection, points out that commutation service was recognized as long ago as the day of the stage coach; that it was adopted and further developed by the railroads; and that, subsequently, the electric railways and, following them, the motorbusses, provided communication service and fares. In all this time, the Commission says (R. 823):

> * * * it appears that a usual characteristic of what was understood to be commutation traffic was transportation *between* separate communities as distinguished from transportation *within* a single community. In other words, the term has been applied generally to suburban and interurban but not to urban transportation, at least not to transportation throughout an urban area.

> We have held that the transportation hereunder consideration is essentially urban in character. Another historic characteristic of commutation fares is that they apply only to a particular class of traffic. Accordingly, we are of the opinion that the prescribed fares cannot properly be regarded as commutation fares. They are, rather, the predominant type of fare regularly and customarily maintained by respondents for transportation over their lines in this area, the single fare being the exception.

That the Commission is right in this seems hardly open to question. Certainly, the Commission, in prescribing for the interstate urban service from and to points throughout the District to and from the Virginia installations just beyond the boundary the same type of fares that was in established use throughout the general urban area, acted rationally, and certainly the token and "pass" fares which were in such general established use were and are the predominant type of fares regularly and customarily maintained, the single fare being the exception. Such fares are not "special rates" or fares. Nor do they apply only to a special service or particular class of traffic. They are, as stated by the Commission, the predominant type, or kind, of fares regularly and customarily maintained in the area. And clearly the carriers' patrons—the users of such type of fares—do not bring to mind the class of

passengers commonly known as commuters. *Int. Com. Comm.* v. *B. & O. Railroad,* 145 U. S. 263, 277–278; *Commutation Rate Case,* 21 I. C. C. 428, 430, 433, et seq.

As above said, the token and "pass" fares in established use in the general urban area are not "special rates" or fares. Nor do they apply only to a special service or particular class of traffic. While the interstate transportation, over which the Commission alone has authority, happens to be of government employees between their homes in the District and the Virginia installations, the Commission found, upon ample evidence, that the transportation was properly to be treated as embraced with the District Urban area, and the mere fact that it was interstate cannot, in the matter here under consideration, be advanced as reason for isolating it from the surrounding intra-District transportation or for purpose of making it appear to stand out as a particular class of traffic moving under "special rates."

Furthermore, even assuming *arguendo* that the urban fares in question are properly to be regarded as of special commutation type, or kind, the Commission is clearly right in its holding that it had authority to prescribe such type of fares. The thought that the Commission may not prescribe commutation fares is based, apparently, on the theory that, although the Commission may regulate such fares once they have been established by a carrier (and this it does whenever oc-

casion therefor arises), it may not impose its judgment on the carrier in the matter of initiating their use. So far as concerns the Transit Company, the type of fares prescribed by the Commission is the carriers' own type of fares maintained throughout the urban area, and, therefore, the Commission's action did not require of that carrier the adoption of a type of fare which in reality was new to it. It was new in the sense only that it was required for the interstate service involved, and which the Commission had found [34] to be essentially of the same urban character. Even if it could be said that section 22 leaves wholly to the managerial discretion of a carrier whether in the first instance to establish commutation fares, still it may be doubted whether in this respect and matter the statute takes cognizance of mere State lines.

On the other hand, except for the ticket book of the Alexandria Line (R. 839), the Virginia Lines do not have in present use the type of fare prescribed, although such type of fare is, of course, applied to the Transit Company's part of the through transportation, that is, between the homes of the passengers and the District terminals of the Virginia Lines. However, en-

[34] Such a finding is commonly administratively factual and would seem to be part of the administrative functions in connection with zone or group fares or rates. Cf. *Illinois Com. Comm. et al.* v. *United States, & I. C. C.*, 292 U. S. 474, 486.

tirely aside from the consideration that the type of fare in quesction is in established use for most of the transportation involved, it is evident that Section 22's language, that nothing in this Act shall prevent the issuance of commutation ticket, does not in terms forbid the Commision from prescribing commutation fares as an initial matter. In fact it does not bring to mind the meaning ascribed to it at all, and the fact that it is not intended to preclude the Commission from prescribing commutation fares appears confirmed by the extrinsic considerations pointed to in the Commission's report. As stated in *Commutation Fares to and from Washington, D. C.*, 33 I. C. C. 428 (cited in the Commission's present report):

> In fixing reasonable fares for this particular commutation traffic elements other than cost which determine reasonableness must not be glossed over. Value of the service to the habitual traveler, if often vaguely conceived, is nonetheless a real factor; and fares tending to put the use of the railroadls beyond the reach of the average commuter of a particular region or which might tend to compel on a large scale changes of residence, or which tend to disrupt the community life of those dependent upon this service, must be viewed in the light of the carrier's obligation as a common carrier designed for community service.

Furthermore, as shown in the *Commutation Rate Case, supra,* pp. 439–431, the benefits resulting from the maintaining of commutation fares are by no means one-sided, but, on the contrary, the establishment thereof by the carriers is generally followed by increased patronage and revenue.

V. The Commission's order prescribing the reasonable fares to be observed by the carriers is not confiscatory nor in any way unreasonable, but, on the contrary, is fully supported by the evidence as in every respect just and reasonable

The appellees' contentions as to the level of the fares prescribed, while alleging confiscation as well as absence of supporting evidence are in both respects bottomed on much the same assertions. The Transit Company apparently places more reliance than the other carriers on the charge of confiscation. Its allegations of confiscation (R. 830), however, clearly do not make compliance with the prescribed requirements in respect of particularity. *Aetna Insurance Co.* v. *Hyde,* 275 U. S. 440, 447–448; *Beaumont, Sour Lake & W. R. Co.* v. *United States,* 282 U. S. 74, 88–89. Moreover, the evidence advanced in support of the allegations plainly fails to meet the tests laid down by this Court. *St. Joseph Stock Yards Co.* v. *U. S.,* 292 U. S. 38; *B. & O. R. R.* v. *United States,* 298 U. S. 349, 380. As stated in the first case:

> The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established.

And, as said by the Court in the second case:

> It is very difficult to attain the high degree of certainty in respect of this vital factor (costs) that is obviously necessary to make dependable proof.

What is involved in the present case is the fares prescribed by the Commission for the Transit Company's Pentagon operations. Those operations, however, include, not only the Company's operation of its Pentagon bus lines, but also the service rendered between the District terminals of those lines and the homes of the passengers on other of its lines in the District. Accordingly, the Transit Company's charges of confiscation could not be supported by cost evidence with respect to a part of the operations alone, namely, that part consisting solely of its Pentagon bus lines operation. Such charges could at best be proven by proffer of evidence, taking into account the entire operations and traffic to which the fares applied. As said by this Court in *Northern Pacific Ry* v. *North Dakota*, 236 U. S. 585, 604:

> * * * where it is established that a commodity or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service *after taking into account the entire traffic to which the rate applies,* it must be concluded that the State has exceeded its authority. [Italics supplied.]

The Transit Company is the only one of the complaining carriers which introduced cost evidence, and its evidence (Ex. 89, R. 1022, 338 et seq.) is confined exclusively to the costs and revenue yield of that part of the Company's Pentagon operations attributable to the service rendered by its two Pentagon bus lines between their District terminals and the Pentagon building. This evidence was of operations for the first seven months of 1943 and purported to show that the costs exceeded the revenue yield under the existing 5-cent fare, such purported cost showing being 5.39 cents per passenger. This figure was contradicted by a cost study introduced by an expert witness for the Departments which showed a cost for the same period of only 3.57 cents per passenger. (Ex. 101, R. 1040, 634, et seq.). And, in addition, another witness for the Departments introduced an exhibit (Ex. 103, R. 1042, 639, et

seq.) which indicated a profit of $76,807 [35] for the same seven months' period of operations. Speaking of this, the Commission says (R. 845):

> The difference between the revenues as shown by the Transit Company and the Departments is due to the fact that the Departments divided the through fare from the passengers' residences in the District to the Pentagon, by way of the Q–2 line, between the lines operating to and from the Q–2 terminal, in proportion to the respective mileages. This resulted in allotting more than 5 cents per passenger to the Q–2 line, and less than the District fare to the lines transporting the passengers to the Q–2 terminal. Assuming that these operations may be considered independently, it is proper to compute the revenue over both of those lines on the basis of 5 cents per passenger, notwithstanding the restrictions placed around the application of that charge on the Q–2 line.

This ruling, predicated as it is on the assumption that it was proper for the Transit Company's cost exhibit to treat its Pentagon bus line operations independently, is unquestionably right. But, as indicated in the ruling and subsequently confirmed by express finding, the Commission does not consider that the Transit Company's Pentagon bus line service can properly be treated as an

[35] This profit, the witness estimated (R. 643) would yield 23.3 percent on property allocable to the Pentagon bus line operations.

independent service, separate from the service rendered by its District lines in carrying Pentagon passengers between their homes in the District and the Q–2 line terminal.

Following its discussion of Exhibit 103 in connection with the Transit Company's Exhibit 89, the Commission's report reads: (R. 845)

> * * * Analysis of the data of record leads us to the opinion that the cost as computed by the Transit Company is somewhat high, while the Department's figure is too low, and that the actual cost per passenger very closely approximates 5 cents. These cost computations make no allowance for return on investment, but it also should be noted that they cover the entire operations of the Transit Company's Pentagon lines, whereas a part of the transportation performed by those lines is within the District. The cost of operation of these lines is only a portion of the cost of the through operation here considered. Since the traffic originates or terminates on practically every bus or street-car line operated in the District the costs are merged with those of the District operations and may not properly be considered as those of an independent operation.

Here, therefore, although the Commission concludes from its analysis that the actual cost per passenger of that part of the Transit Company's Pentagon operations consisting of the operation of its two Pentagon bus lines approximates 5 cents

(the amount of the fare charged), it, at the same time, points to two considerations. The first is that the cost computations cover the entire operation of the said two bus lines, whereas a part of the transportation performed by those lines is within the District. Here, it is apparent that the Commission has in mind that, although a Pentagon passenger using the Transit Company's Pentagon bus lines must pay 5 cents plus a District fare, the transportation for which such payment is made overlaps transportation which, except in cases of Pentagon passengers, the Company holds out for a District fare between any points in the District. The second consideration to which the Commission points is that, since the Transit Company's Pentagon traffic originates or terminates on practically every line operated by it in the District, the Company's operation of its two Pentagon bus lines cannot, for purposes of cost and revenue computations, be properly regarded and treated as an independent operation. The quotation above given from *Northern Pac. Ry.* v. *North Dakota, supra,* is, it is believed, directly relevant to this latter consideration.

Just as in the case of its Pentagon traffic moving over its two Pentagon bus lines and its lines in the District, similarly in the case of the through passenger traffic between it and the Virginia Lines, the Transit Company made no attempt to show costs and revenue in respect of its lines in the

District on which such traffic originates and terminates; and, as stated, the Virginia Lines introduced no cost studies whatsoever (R. 847). In addition to the cost exhibits introduced by witnesses for the Departments, certain cost testimony in support of their contentions was given by a civilian consultant to the Transportation Corps of the Army (R. 844, 238 et seq.).

Concerning the evidential support for the reasonableness of the fares prescribed by the Commission, there was the cost evidence, above referred to, and, to that evidence, the Commission gave due weight (R. 846). In addition the record showed that the carriers had experienced a large increase in traffic during the war emergency although their costs had also increased (R. 848). Further, there was evidence respecting the "value of the service", that is, that its cost was out of proportion to its value to the employee passengers and more than they should be called upon to bear (R. 850, 13, 17, 366–386). And, in particular, there was the consideration that "the usual and accepted basis for passenger fares in urban communities is a group or zone adjustment under which the same fare is charged for a continuous trip between any two points in a zone regardless of how long or how short it may be (R. 846). Enlarging on this the Commission said (R. 848):

> The making of transportation rates or fares on a group or zone basis is not an uncommon practice. Measured by distance

> alone a certain degree of inequality is naturally inherent in such a system. The same rate or fare is charged for a short distance as well as for the longer ones within the same group or zone, and from a point in one group or zone to a point in another the rate or fare may be higher for a shorter distance than that between points in the same group or zone. The existence of situations of this kind does not in itself indicate any legal impropriety in such an adjustment of rates or fares. The important considerations are whether or not the transportation conditions within a given group or zone are such as to justify the observance of a common level of intragroup or intrazone rates or fares and whether the group or zone boundaries have been reasonably drawn.

The making of rates or fares on a group or zone basis is undoubtedly a very common practice indeed. Zone fare adjustments have their counterparts in freight rate adjustments, such as the so-called group rates to common markets which frequently "blanket" extensive coal, lumber, agricultural or other producing areas and such as the intradistrict switching rates maintained throughout the industrial areas of many large cities. For example, the switching district at Chicago is 40 miles in length and, within it, the same charge is made for switching regardless of the commodity (with a few exceptions) and regardless of distance, the only differentiation made being that the charge for a three-or-more-line

haul is more than that for a two-line haul and the charge for a two-line haul is more than that for a one-line haul. *Illinois Com. Comm.* v. *United States (Chicago Switching Case)*, 292 U. S. 474. In the case just cited the Court said (p. 486):

> Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission. See *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 138, Note 1, 141; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 518, Note 1; *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 660, 664.

The Commission's order immediately involved in the above case was one entered under section 13 (4) of the Act, increasing the intrastate switching rates involved to the level of the interstate charges. However, as is customary in such case and, in fact, necessary (*Georgia Comm.* v. *United States*, 283 U. S. 765, 770), the Commission had previously determined and fixed the reasonable level of the interstate charges (p. 477) and, accordingly, it follows that the Court's statement, above quoted, as to the competence of the Commission in the intrastate case before it applies equally to the fixing of a uniform group rate for interstate application within a switching district or other blanket area. In the present case, the

Commission did not, of course, determine and fix the zone fares for intra-District use, but it is, nevertheless, evident that its determination that, for interstate fare-making purposes, the urban zone area should reasonably include the Virginia installations just beyond the District line (R. 849) was not a determination foreign to its administrative functions and authority but, on the contrary, involved practically the same transportation considerations as in the *Chicago Switching Case, supra,* or in any interstate group rate adjustment.

The carriers contended that the proper demarcation line for the application of District zone fares was the political boundary between the District and Virginia. There was, on the one hand, evidence showing that in several cities the local fares apply to and from certain points beyond the city limits, and there was, on the other hand, evidence as to a number of cities where the local fares apply within the city and higher fares, on zone bases, apply to nearby communities (R. 844). In the case of the District as the national capital, however, it (the District) had, in effect, "burst its boundaries," requiring the construction of the Pentagon and the other installations (R. 843–844); and the mass movement to and from them daily of residents of the District supplied special reason for treating the installations as within the District zone area. Based on this consideration

and the consideration that, in any event, it should not base its decision on such a "fortuitous circumstance" the Commission concluded that the fact that the installations were just beyond the political boundary line had little or no bearing and that it "should look rather to the essential nature of the transportation and the conditions under which it is performed" (R. 849).

In connection with considerations of such kind, the Commission, referring to evidence introduced by the Departments (Ex. 13, R. 961, 47 et seq.), said (R. 844):

> A computation based upon information obtained from responses of 9,500 employees at the Pentagon and the Army Annex to a questionnaire distributed by the Department shows that the average one-way distance traveled by such employees over respondents' lines between their residences in the District and the installations mentioned is 6.21 miles. This is considerably less than one-half of the maximum distance over which a passenger may travel for one fare within the District, and compares favorably with the distances from a number of selected points within the District to various military establishments in the District where military personnel and civilian employees of the Departments are assigned to duty. * * *

And with respect to the many other considerations showing that the Virginia installations

should reasonably be included in the District zone area, the Commission said (R. 849):

> This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line, and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. In the case of the former, the movement is in vehicles loaded to utmost vehicle capacity and for relatively short distances, while the latter is characterized by longer hauls and less utilization of vehicle capacity although, under present conditions, practically all urban and suburban bus lines are heavily loaded during rush hours. It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic. These roadways consist in large part of one way traffic lanes, and they are without impediments com-

monly encountered on city streets, such as grade intersections, traffic lights, left turns, and resultant congestion. Large and expensive improvements and additions have also been made in the traffic arteries on the District side of the Potomac. Respondents have the use of these new and improved facilities in other operations conducted by them.

It will be noted that the above considerations showing that the Virginia installations should, for fare purposes, be included in the District zone area, also lead to a conclusion that zone fares reasonable for application between any points in the District would likewise be reasonable for application between points in the District and the Virginia installations. Because of this, apparently, and the fact that the Commission prescribed, as reasonable for the Transit Company's Pentagon operations, fares not exceeding the present District fares, the Company contended in the lower court that what the Commission's order required of it was, not the establishing of reasonable fares, but the extension of its District fares to include its Pentagon operations. However, it is not at all unusual for the Commission, particularly in group rate adjustments, to prescribe as reasonable from additional origins, rates not to exceed those in established use from other origins. The fact that here the existing District zone fares were determined and prescribed as reasonable by the

District Commission clearly did not discredit their evidential value and it is equally clear that the fact that the Commission, in prescribing the reasonable fares for the Transit Company's Pentagon operations, specified fares not to exceed the District fares, did not make its action other than what it purported to be, namely, the prescribing of reasonable fares. Cf. *Virginian Railway Case, supra,* 272 U. S. 658; *Chicago, R. I. & Pac. Ry.* v. *United States,* 274 U. S. 29.

In the case last cited, the Commission's order prescribed, as reasonable for rail-water-rail transportation of cotton from Oklahoma origins via Galveston to New England destinations, rates not exceeding "rates 4 cents per 100 pounds lower than the present all-rail rates from and to the same points." Claiming that the 4-cent differential was the amount charged as premium for insurance to cover the risk of water transportation, the railroads alleged that the order was invalid because the Commission, instead of determining and prescribing reasonable rates, had undertaken to equalize the rail-water-rail rates with the all-rail rates (p. 32). However, the Court did not consider that that view of the action taken by the Commission was warranted, and its opinion also shows (p. 34) that the use made by the Commission of the all-rail rates as comparative evidence was not open to objection.

The Transit Company's objection to the Commission's prescription of fares for its Pentagon

operations at the same level as the District fares was also predicated on the ground that the fares had been fixed by the District Commission (as required by Congress) based solely on its operations within the District and only to yield a fair return on those operations; and, apparently, that for that reason they did not afford a reliable evidential basis for the fares prescribed by the Commission. It is true that, while the record showed that the Transit Company had experienced a large increase in traffic (R. 848–849) since its fares were fixed, neither this showing nor other evidence of record furnished a basis for accurate knowledge of whether the Company's fares were, or were not, just at a proper level. Nor did the Company's cost exhibit or any other of its evidence show just what was the contribution to its revenues made by its Pentagon operations. But, in order that the District zone fares in established use be treated by the Commission as having good probative value in support of the fares it prescribed, it was not necessary that the Commission have accurate knowledge that the former were fixed just at the proper level. *Virginian Railway Case, supra,* 272 U. S. 658, 665.

In the case just cited (which was a group rate case and in other respects presents close analogies to the present case), the Commission's order prescribed the same level of rates on coal from certain mines in a mining district as the group rates which were in effect from other mines and,

in attacking the order, the Virginian urged that the existing group rates were not proper standards of reasonableness; that they were the "outcome of competitive stress and strain through long periods of development" and were "below the level at which maximum reasonable rates might be maintained." Despite these contentions, the Court considered that it was entirely within the Commission's competence to treat the group rates as having good probative value and, in this connection, it said (p. 666) that

> It was shown that a huge coal traffic moves from this territory, under like operating conditions, at the blanket rates which were voluntarily established by the other carriers to serve mines similarly located. This fact, and much else in the voluminous record; afford substantive evidence to support the finding that the existing rates are unreasonable; and that those which the order directs are reasonable.

Here the record, while not showing just what is the amount of traffic moving under the District fares, nevertheless shows that it is in very large volume (R. 849, 840) and, as above detailed (P. 113) there was other evidence and other grounds supporting the Commission's order.

It will have been noted that, while the fares prescribed as maxima for the "one-line hauls" over the Transit Company's own routes were at the same level as the District fares, the joint fares

prescribed by the Commission as maxima for application over the through routes between the Transit Company and the Virginia Lines were at a higher level. However, the carriers clearly cannot advance this fact as a grievance. The revenue from the fares has to be divided and, as illustrated in the *Chicago Switching Case, supra,* it is common practice in like, or analogous, situations to make a greater charge for "two-or-more-line-hauls" than for "one-line-hauls." Cf. *Georgia Comm.* v. *United States,* 283 U. S. 765, 767.

As regards the local fares of the Virginia Lines between the Virginia installations and their District terminals, the Commission, as above shown, found in its report (R. 851) as follows: That the fares

> are unreasonable to the extent that they exceed a fare of three tokens for 25 cents, equal to 8⅓ cents per one way trip, provided, however, that the present cash fare of 10 cents per single trip may be continued. The local fare of 7.5 cents of the Alexandria, Barcroft & Washington Transit Company between the Army Air Force Annex and the District terminal of that Company may be increased to the basis herein approved.

The only findings requiring reduction in the said local fares of the Virginia Lines are, it will be noted, those requiring "a fare of three tokens

for 25 cents." The Commission had found (R. 850) that:

> So far as the Alexandria and Arlington Lines are concerned, it is shown that they have reaped a particularly important advantage from this traffic, which makes for economical and profitable operation. Formerly their traffic was unbalanced, but they now have an important volume of counter-flow traffic, an advantage which is rather unique in the business of urban or suburban transportation.

And, further, all of the Commission's findings (R. 849) respecting the favorable operating conditions under which the transportation is conducted, the new and modern roadway system, the full capacity loads and the like apply very forcibly to the said local transportation and fares of the Virginia Lines as do also the Commission findings (R. 850) that the existing fares are out of proportion to "the value of the service" to the passenger employees and more than they should be called upon to bear. In addition, the Commission's findings that the District urban area should reasonably include the Virginia installations apply and, in and of themselves, afford sound reason and warrant for the prescription of the token fare.

VI. Appellees' objections to Exhibit 13 are unwarranted

The appellees contended in the lower court that the computation (Ex. 13, R. 844) showing the average distance travelled by passenger employees between their homes in the District and the Pentagon and Army Annex was improperly in evidence. This contention is wholly without warrant. Both of the officers who compiled the returns qualified as expert statisticians. The questionnaires were signed by each employee, with his room number, and were made available at the hearing to counsel for the appellees for cross-examination (R. 584 et seq., 616 et seq.). They were actually used for that purpose. The direct, as well as the cross-examination, show that these exhibits were prepared under the immediate supervision of the Army officers named (R. 42, 47, 584, 616). Moreover, counsel for the War Department offered to make available for examination by the appellees all persons who assisted in the preparation of the exhibits and all signers of the questionnaire. The offer was not accepted by counsel for appellees. (R. 595.)

If there was any question concerning the validity of Exhibit 13 and other exhibits which rested upon returns to the questionnaire, the appellees are estopped from raising any objection now because they sought to take advantage of information contained in the questionnaires in respect of certain matters. For example, they have argued

that the fares in issue are not unreasonable because, allegedly, only a small proportion of the employees made any complaint about the fares in their returns to the questionnaire and a number commended the service rendered by the carriers (R. 614–615). Moreover, as above indicated, appellees' counsel made use of the questionnaires in their cross-examination, and they did not take advantage of the offer made by counsel for the War Department to produce the compilers of the exhibits and the signers of the questionnaires.

Exhibit 13 and other exhibits predicated upon returns to the questionnaire were properly admissible under Rule 75 of the Commission's General Rules of Practice. This rule is as follows:

> Any evidence which would be admissible under the general statutes of the United States or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

The admission of Exhibit 13 and other exhibits mentioned, based upon the returns to the questionnaire, was not at variance with the hearsay rule.

The general rule in such circumstances is stated in 22 Corpus Juris, p. 218, as follows:

> The hearsay rule does not necessarily preclude a witness from stating what certain unsworn statements show and, assuming them to be correct, what they prove; nor is such rule violated by allowing a witness to state the results of voluminous facts, or of an inspection of books and papers which cannot conveniently take place in court.

The evidence was also admissible under the opinion evidence rule that an expert may testify to the results of complex or collective facts, 22 Corpus Juris p. 531. Obviously, evidence of the character under consideration could have been presented in no other way.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed with directions to dismiss the bill for want of equity.

DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

APPENDIX "A"

Pertinent provisions of Interstate Commerce Act, Part II.

Section 203 (b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations,

if such federation possesses no greater powers or purposes than cooperative associations so defined; or (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation; or (7) motor vehicles used exclusively in the distribution of newspapers; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such inter-

state route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other person who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such a certificate or permit.

Section 205 (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of

the requirements established under section 204 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in section 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17. If a joint board

to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify.

Section 216 (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case

of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate of foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. * * *

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217: Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge

or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon it own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

APPENDIX "B"

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 75289 Sub 7 TA	Capital Transit Company, Washington, D. C.
" Sub 8 TA	
MC 84728 Sub 11 TA	Safeway Trails, Inc., Washington, D. C.
MC 101349 Sub 4 TA	Richard M. O'Boyle and Lillian M. O'Boyle,
" Sub 8 TA	dba M. I. O'Boyle & Son, Washington, D. C.
" Sub 9 TA	
" Sub 14 TA	
MC 102515 Sub 2 TA	James E. Hood, Washington, D. C.
MC 104208 TA	Chester Moore Atwood, dba Atwood's Camp Pickett Transport Service, Washington, D. C.
MC 104326 TA	Safeway Trails, Inc., Washington, D. C.
MC 104623 Sub 2 TA	Morris Fox, Washington, D. C.
" Sub 5 TA	
MC 104809 TA	Sam Milkie, Washington, D. C.
MC 104897 TA	Percival H. Beavers, Washington, D. C.
MC 47221 Sub 1 TA	Catherine G. Hitchcock, Dover, Del.
MC 79544 Sub 1 TA	McCormick Transportation Company, Wilmington, Del.
MC 87109 Sub 1 TA	Masten Trucking Company, Inc., Milford,
" Sub 3 TA	Del.
MC 93549 Sub 2 TA	William M. Mayew, Inc., Newport, Del.
MC 94286 Sub 4 TA	Earl Perry, Delaware City, Del.
MC 102434 Sub 5 TA	U. S. Aeroplane Carriers, Inc., Dover, Del.
" Sub 6 TA	
" Sub 13 TA	
" Sub 17 TA	
" Sub 21 TA	
" Sub 22 TA	
" Sub 29 TA	
" Sub 31 TA	
" Sub 32 TA	
" Sub 33 TA	
" Sub 39 TA	
" Sub 40 TA	
" Sub 41 TA	
" Sub 42 TA	
MC 104348 Sub 1 TA	S. G. Fullman, Delaware City, Del.

These proceedings coming on for further consideration:

IT APPEARING, That in accordance with the provisions of the Interstate Commerce Act, as amended; temporary authority has heretofore been granted to the above applicants, respectively, to operate as motor carriers in interstate or foreign commerce, until December 31, 1944.

IT FURTHER APPEARING, That by Act of Congress, approved December 21, 1944, the amendments of the Interstate Commerce Act, included in the Second War Powers Act, have been continued in force until December 31, 1945, and,

IT FURTHER APPEARING, After due investigation that the public interest requires a continuation of the operations conducted under the orders above-named and the urgent need for such service still exists; therefore,

IT IS ORDERED, That each of the above-named carriers, be, and they are hereby authorized to continue the operations specified in said orders, respectively, until December 31, 1945, unless otherwise ordered.

By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary*.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 75289 Sub 7 TA	Capital Transit Company, Washington, D. C.
" Sub 8 TA	
MC 84728 Sub 11 TA	Safeway Trails, Inc., Washington, D. C.
MC 101349 Sub 4 TA	Richard M. O'Boyle and Lillian M. O'Boyle,
" Sub 8 TA	dba M. I. O'Boyle & Son; Washington, D. C.
" Sub 9 TA	
" Sub 14 TA	

MC 102515 Sub 2 TA	James E. Hood, Washington, D. C.
MC 104208 TA	Chester Moore Atwood, dba Atwood's Camp Pickett Transport Service, Washington, D. C.
MC 104326 TA	Safeway Trails, Inc., Washington, D. C.
MC 104623 Sub 2 TA	Morris Fox, Washington, D. C.
" Sub 5 TA	
MC 104809 TA	Sam Milkie, Washington, D. C.
MC 104897 TA	Percival H. Beavers, Washington, D. C.
MC 47221 Sub 1 TA	Catherine G. Hitchcock, Dover, Del.
MC 79544 Sub 1 TA	McCormick Transportation Company, Wilmington, Del.
MC 87109 Sub 1 TA	Masten Trucking Company, Inc., Milford, Del.
" Sub 3 TA	
MC 93549 Sub 2 TA	William M. Mayew, Inc., Newport, Del.
MC 94286 Sub 4 TA	Earl Perry, Delaware City, Del.
MC 102434 Sub 5 TA	U. S. Aeroplane Carriers, Inc., Dover, Del.
" Sub 6 TA	
" Sub 13 TA	
" Sub 17 TA	
" Sub 21 TA	
" Sub 22 TA	
" Sub 29 TA	
" Sub 31 TA	
" Sub 32 TA	
" Sub 33 TA	
" Sub 39 TA	
" Sub 40 TA	
" Sub 41 TA	
" Sub 42 TA	
MC 104348 Sub 1 TA	S. G. Fullman, Delaware City, Del.

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IT IS ORDERED, That each of the above-named carriers, be, and they are hereby authorized to continue the operations specified, in said orders, respectively, until December 31, 1945, unless otherwise ordered.

By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary.*

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 5, held at its office in Washington, D. C., on the 30th day of December, A. D. 1944

MC 2610 Sub 1 TA	William C. Barry, Inc., Medford, Mass.
MC 3049 Sub 1 TA	Edmund O. Rainville, dba E. O. Rainville Auto Transport, Springfield, Mass.
MC 38516 Sub 2 TA	Jacob M. Blassberg, Shelburne Falls, Mass.
MC 69747 Sub 2 TA	Arthur K. Finney, dba A. K. Finney, Plymouth, Mass.
MC 105077 Sub 1 TA	Beraice Guilbeau, dba Leo C. Guilbeau, South Hadley Falls, Mass.
MC 82211 Sub 2 TA	Vincenzo Frank Orza, New York, N. Y.
MC 103869 Sub 4 TA	Owners Trucking Company, Inc., Syracuse, N. Y.
MC 104123 Sub 27 TA	John Schutt, Jr., Inc., Buffalo, N. Y.
MC 32413 Sub 1 TA	A. N. Yearick and W. L. Yearick, dba Yearick's Dray, Lewistown, Pa.
MC 41640 Sub TA	Christian C. Dietrich and Ernest J. Dietrich,
" Sub 8 TA	dba Dietrich Brothers, Philadelphia, Pa.
MC 45079 Sub 2 TA	George S. Morelock, Harrisburg, Pa.
MC 30313 Sub 3 TA	George J. Bertch, Kane, Pa.
MC 65916 Sub 3 TA	Ward Trucking Corp., Altoona, Pa.
MC 103764 Sub 1 TA	Ray E. Benson and Warren W. Benson, dba Benson Brothers, Huntingdon, Pa.
MC 43461 Sub 3 TA	Eli I. Soldier and James J. Soldier, dba Soldier Brothers Auto Body Transit Lines, Toledo, Ohio

MC 86931 Sub 8 TA	Ward E. Lanning, Coshocton, Ohio.
" Sub 9 TA	
MC 60508 Sub 2 TA	Robert White Wilson, Yanceyville, N. C.
MC 62826 Sub 1 TA	Carolina-Norfolk Truck Line, Norfolk, Va.
" Sub 3 TA	
MC 68167 Sub 10 TA	Washington, Virginia and Maryland Coach Company, Inc., Arlington, Va.
MC 102538 Sub 5 TA	W. E. Penley, dba Yellow Cab and Coach Company, Bristol, Va.
MC 104682 TA	Lonnie Albert Hensley, dba Lonnie A. Hensley, Elkton, Va.

This authority was previously granted under MC 103507 TA.

These proceedings coming on for further consideration:

IT APPEARING, That in accordance with the provisions of the Interstate Commerce Act, as amended, temporary authority has heretofore been granted to the above applicants respectively, to operate as motor carriers in interstate or foreign commerce, until December 31, 1944.

IT FURTHER APPEARING, That by Act of Congress, approved December 21, 1944, the amendments of the Interstate Commerce Act, included in the Second War Powers Act, have been continued in force until December 31, 1945, and,

IT FURTHER APPEARING, After due investigation that the public interest requires a continuation of the operations conducted under the orders above-named and the urgent need for such service still exists; therefore,

IT IS ORDERED, That each of the above-named carriers, be, and they are hereby authorized to continue the operations specified in said orders, respectively, until December 31, 1945, unless otherwise ordered.

By the Commission, division 5.

(SEAL.) W. P. BARTEL, *Secretary*.

U. S. GOVERNMENT PRINTING OFFICE: 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The original report of the Commission (R. 835–857) is reported in 256 I. C. C. 769. The supplemental report of the Commission (R. 813–827) is reported in 258 I. C. C. 559. The first opinion of the District Court (R. 912–921) is reported in 55 F. Supp. 51. The second opinion of the District Court, together with the dissenting opinion (R. 943–949) is reported in 56 F. Supp. 670.

JURISDICTION

The final decree of the District Court (R. 952–953) was entered September 20, 1944, and the appeal was allowed the same day. (R. 954.) Probable jurisdiction was noted December 11, 1944. The Court's jurisdiction rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; 28 U. S. C., secs. 45 and 47a) and section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C., sec. 345).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, p. 50 *et seq.*

QUESTIONS PRESENTED

1. Whether the Commission properly held that the interstate transportation here involved was taken outside the commercial-zone exemption in Section 203 (b) (8) of the Motor Carrier Act, either because the carriers are not engaged in intrastate transportation over the entire length of the interstate routes or because jurisdiction is required to carry out the national transportation policy.

The foregoing question, decided adversely to the Commission by the court below, is the only one passed on by the majority of that court. The following additional questions raise issues argued in

the court below and presumably to be presented here by appellees in support of the judgment.

2. Whether the Commission was required to convene a Joint Board to conduct the investigation into the reasonableness and lawfulness of the fares of appellees, under Section 205 (a) of the Motor Carrier Act.

3. Whether the order of the Commission was beyond its jurisdiction to the extent that it applies to the electric railway operations of the Transit Company in conjunction with the bus operations of that company.

4. Whether the order of the Commission prescribes commutation fares, and, if so, whether such an order is beyond the authority of the Commission.

5. Whether the maximum fares prescribed are unreasonable or confiscatory.

STATEMENT

This proceeding was instituted by the Interstate Commerce Commission as an investigation into the reasonableness and lawfulness of certain fares of the five appellee motor carriers.[1] The fares in question relate to the transportation of passengers between points in the District of Col-

[1] The Capital Transit Co., the Alexandria, Barcroft and Washington Transit Co., the Arlington and Fairfax Motor Transportation Co., and the Washington, Virginia & Maryland Coach Co., hereinafter referred to as the Transit Company, the Alexandria Line, the Arlington Line, and the Coach Company, respectively.

umbia and points on the Virginia side of the Potomac River to certain Military and Naval headquarters: the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport. The investigation was an outgrowth of persistent efforts by the War and Navy Departments to secure a reduction in fare for the employees traveling between the District and the Virginia installations. These efforts reached a stage at which the carriers agreed to adopt recommendations made unofficially by a committee of the Office of Defense Transportation, but the recommendations were unacceptable to the War Department because, as stated by Secretary Stimson in a letter to Chairman Alldredge of the Commission, the proposals "will probably result in increased cost of transportation, or at best would bring about negligible savings to them [employees]." (Ex. 5, not printed; see also R. 570–572; Exs. 57–59, R. 998–1014, 177–180.)[2]

The total number of persons employed at the Virginia installations is over 40,000, including about 30,000 at the Pentagon. Somewhat less than half of these reside in the District and travel to and from work each day. The number of passenger trips to or from the District to the Virginia installations is over 31,000 per day (Ex. 15,

[2] The recommendations contemplated a fare of 13⅓ cents for the through transportation between any point in the District and the Virginia installations. See p. 42, *infra*.

R. 961; R. 839–840).[3] The Transit Company operates only rush-hour service between the District and the Pentagon, in the morning and in the afternoon. The Virginia Lines operate between terminals in the downtown section of the District and points in Virginia. All the appellees serve the Pentagon. The Alexandria Line serves the Navy Annex, Army Annex, and Airport as well. The Arlington Line serves the Navy Annex, in addition to the Pentagon. The Coach Company serves only the Pentagon, and its service is irregular. (R. 837–838.) The distances between the Virgina installations and the District terminals are shown in Exhibit 12 (R. 960), as well as the distances to the Virginia installations from representative points in the District. The Pentagon, for example, is 3.5 and 3.6 miles from the two Transit Company terminals, respectively, and from 3.6 to 5.2 miles from terminals of the other companies.

The existing pattern of fares is complex. The Transit Company charges 5 cents for the trans-Potomac trip on its Pentagon buses on one route, and on the other it charges 5 cents in addition to a transfer from one of the District Lines, on which the fare is 10 cents in cash, or three tokens for 25 cents, or an unlimited weekly pass costing $1.25. The Virginia Lines charge, in general, a one-way fare of 10 cents. However, the Alex-

[3] The figures in Exhibit 15 represent an actual traffic count made during a 24-hour period in August 1943 (see R. 49–50).

andria Line offers a book of 26 tickets at 7.5 cents each for service between the District and the Army Annex, and both the Alexandria and the Arlington Lines have a 5-cent fare between the Memorial Bridge and Navy Annex (R. 838–839). Thus a passenger using a District bus or streetcar of the Transit Company and a trans-Potomac bus of the Transit Company or one of the Virginia Lines pays a total fare which consists of the District fare plus either 10 cents, 7.5 cents, or 5 cents. There are no transfer privileges between the Transit Company and the Virginia Lines.

After extensive hearings, the Commission prescribed maximum fares as follows: (a) The Transit Company is required to charge its District fares for the Pentagon service, including service on its District buses or streetcars in combination with its trans-Potomac service to the Pentagon. To the extent that its existing fares are less (in the case of an independent trans-Potomac trip over one of its routes at 5 cents), the fares may be raised to the prescribed maximum. (b) The Virginia Lines are required to establish a maximum fare of 10 cents per single trip or three tokens for 25 cents, for trips solely on their lines. To the extent that their existing fares are lower, they may be raised to that level. (c) In addition, the Commission required a maximum joint fare for trips utilizing both the Transit Company and the Virginia Line facilities. This maximum joint fare was fixed at 12 trips for

$1.60, equal to 13⅓ cents per trip (R. 850–851, 857).

The appellees filed complaints in the District Court to set aside the Commission's order, alleging that the Commission lacked jurisdiction and that the order was unreasonable and confiscatory (R. 828–890). The District Court set aside and enjoined the order on the ground that the transportation involved fell within the so-called commercial-zone exemption of Section 203 (b)(8) of the Motor Carrier Act, and that it was not removed from the exemption under the terms of that section, as the Commission had held, by reason of the fact (a) that the carriers were not engaged in intrastate operation over the entire length of the interstate routes, or (b) that jurisdiction was required to carry out the national transportation policy. The court, relying on *City of Yonkers* v. *United States*, 320 U. S. 685, held that the Commission's conclusion with respect to the national transportation policy was not supported by adequate findings (R. 913–921).

The Commission thereupon ordered the proceeding reopened for further hearing and consideration, on the jurisdictional issues ruled on by the District Court (R. 772–775). The appellees objected to any reopening on the ground that the issues were *res judicata* and that the Commission had been held to be without jurisdiction (R. 774, 777–778). The Commission received additional evidence, as a foundation for further find-

ings, on the importance of the military and naval installations from the standpoint of the conduct of the war (R. 794–804). The Commission also received copies of orders of the District Public Utilities Commission describing the transportation privileges within the District of each of the Virginia Lines (R. 781; Exs. 107–109, R. 1049–1064). These exhibits confirm the fact that the Coach Company performs no intrastate service in the District, and that the other two Virginia Lines perform none on the Memorial Bridge route, and on the Highway Bridge route may receive passengers on inbound trips and discharge passengers on outbound trips within the District only at the stops at Jefferson Memorial (R. 1051, 1054). The Commission filed a supplementary report, making detailed findings on the jurisdictional issues, and discussing also the question, raised in a dissenting opinion in the original report, whether the fares were in any sense commutation fares and, if so, whether the Commission was empowered to prescribe them. The Commission adhered to its earlier order. (R. 813–827.)

The appellees moved in the District Court that the prior decree of injunction be made to include the supplemental order of the Commission, or that an additional decree to that effect be entered. (R. 923–927.) The Commission filed an answer to the motion, asserting that its subsequent proceedings were responsive to, and not in violation of, the decree of the court. (R. 929–933.) The

United States moved in the District Court for a new trial and new judgment dismissing the complaints, in the light of the Commission's supplemental report and finding, and also filed a memorandum in opposition to the motion of the appellees (R. 939–941, 933–939). The District Court, after argument on the motions of appellees and of the United States, entered a decree setting aside and permanently enjoining the supplemental order of the Commission. The majority of the Court adhered to its previous opinion with respect to the "entire length" proviso of the commercial-zone exemption, and held further that the findings of the Commission regarding the necessity of removing the commercial-zone exemption to promote the national transportation policy were not supported by the evidence. (R. 942–945.) Mr. Justice Arnold delivered a dissenting opinion sustaining the jurisdiction of the Commission and upholding the order as against the objections raised by appellees on the merits (R. 945–949).

SUMMARY OF ARGUMENT

1. The Commission properly held that the interstate transportation for which it prescribed maximum rates is not within the commercial-zone exemption of Section 203 (b) of the Motor Carrier Act. In the first place, that exemption applies only where the carrier of passengers is en-

gaged in intrastate transportation over the entire length of the interstate route; here one of the carriers performs no intrastate transportation in Virginia, one performs none in the District of Columbia, and the other two perform only negligible intrastate transportation in the District. Secondly, the Commission properly concluded that the exemption should be removed in any event because jurisdiction over the reasonableness of fares is necessary to carry out the national transportation policy, and by Section 203 (b) this necessity is made an express ground of removal from the exemption. Reasonable fares for mass transportation to the national headquarters of our military and naval establishments are, as the War and Navy Departments and the Commission have recognized, within the purview of the national transportation policy, one of the declared objects of which is to maintain a transportation system adequate for the needs of national defense.

2. The Commission did not err in declining to refer the investigation to a Joint Board under Section 205 (a) of the Act. Such a reference is mandatory in the case of a complaint involving three states or less; but the present proceeding was not heard upon complaint but upon an investigation by the Commission on its own motion, albeit at the request of the Secretary of War.

3. The Commission did not violate any provisions of the Act in making its order applicable to the electric street railway service of the Transit

Company insofar as that service is interchangeable with the company's bus service. The order prescribes maximum joint rates between the Virginia Lines, which are exclusively motor carriers, and the bus lines of the Transit Company; as an incident of the order, it was proper to require that the ordinary interchange between bus and streetcar service of the Transit Company be maintained in relation to the joint fares.

4. The fares prescribed are not commutation fares. While they permit the sale of tokens, and require the sale of multiple-trip tokens or tickets for the joint fares, these are the normal and predominating fares for the respective transportation services and are not in the nature of reduced fares for a special class of suburban or interurban traffic, as would be characteristic of commutation fares. Moreover, the Commission does not lack power to establish commutation fares. Section 22 of the Act merely provides that nothing in the statute shall prevent carriers from establishing commutation fares. This provision gives assurance that such fares are not discriminatory *per se;* it does not preclude the Commission, in the first instance, from finding that commutation fares should be established as part of a reasonable schedule of rates.

5. The fares prescribed are not unreasonable or confiscatory. While they reflect a differential in rates between the unitary transportation of the

Transit Company and the interline transportation of that company in conjunction with the Virginia Lines, such a differential previously existed, it is not uncommon, and it is not complained of here by passengers. In making the District of Columbia zone fare of the Transit Company applicable to its single-line transportation service to the Pentagon, the Commission acted on ample evidence that such treatment was reasonable in view of the relative distances involved and the character of the transportation as mass urban service. Only the Transit Company introduced cost evidence, and this fails to show that for the entire transportation between points of origin in the District and the Virginia installations the rates are not compensatory. Furthermore, certain of the existing rates may be increased under the order; and divisions of the joint rates have not been prescribed, and on no basis can they be assumed to be other than amply compensatory.

ARGUMENT

The order of the Commission covers only interstate rates. No question of constitutional authority is presented, and indeed if the Commission has no jurisdiction, the rates are not within the jurisdiction of any regulatory authority. These considerations are of major significance in approaching the various objections raised by the appellees in the court below to the authority of the Commission.

Certain of the objections go to the entire order—that the transportation is exempted by the "commercial zone" provision in Section 203 (b) (8) of the Interstate Commerce Act, and that a joint Board should have been convened pursuant to Section 205 (a) of the Act. Other objections go to particular aspects of the order—that it unlawfully requires the Virginia lines to establish joint fares with an electric railway system; that it unlawfully prescribes commutation tickets; that the extension of the District fare to the Pentagon operations of the Transit Company is unreasonable and confiscatory. Only the issue of the commercial-zone exemption was passed on by the court below. Because of the importance of a prompt decision of the whole case, if the benefit of the rate order is to be made effective, and because the questions raised below by the appellees are dependent on issues of law, we shall not confine our discussion to the single question decided by the District Court.

I

The transportation is not within the commercial-zone exemption

The so-called commercial-zone exemption is contained in the following portions of Section 203 (b) of the Interstate Commerce Act, as added by the Motor Carrier Act of 1935:

> (b) Nothing in this part, * * * shall be construed to include * * * (7a) the

transportation of persons or property by motor vehicle when incidental to transportation by aircraft *nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act,* shall the provisions of this part * * * apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities * * * *provided that* the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce *is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction;* * * *.* [Italics supplied.]

The routes here involved are within the Washington, D. C., commercial zone as heretofore defined by the Commission. See 3 M. C. C. 243. The Commission based its jurisdiction upon each of the two provisions which are exclusions from the commercial-zone exemption, and which are italicized in the quotation above: (a) the provision relating to the national transportation policy, and (b) that relating to to the "entire length" of the

interstate route. In the court below, Justice Arnold agreed with the Commission's conclusion as to both grounds of exclusion. The majority of the court, however, rejected both grounds, as indeed it is necessary to do if the order is to be set aside under the commercial-zone clause. We submit that the order can be supported on the basis of either ground taken by the Commission.

1. In view of the concessions made on the record, as well as the undisputed facts, the holding of the court below that all of the appellees satisfied the proviso regarding intrastate transportation over the "entire length" of their interstate routes is hardly understandable. Counsel for the Capital Line and for the Alexandria Line stated at the outset of the Commission hearing that the Commission had jurisdiction (R. 5–6). Counsel for each of these lines repeated the assertion during the argument at the close of the hearing (R. 701, 719). The president of the Capital Line testified that it had no intrastate rights in Virginia (R. 188). A third appellee, the Coach Company, has no intrastate rights in the District, as its general manager testified (R. 443). In its first opinion the Commission ruled that as to the Transit Company and the Coach Company, "there is no doubt that we have jurisdiction because one does not perform intrastate transportation in Virginia and the other does not perform it in the District" (R. 843). As to the Arlington and Alexandria Lines, the Commission concluded that

since they perform restricted intrastate transportation in the District, it is "reasonably clear" that their fares between the District and the Virginia installations are subject to the Commission's jurisdiction (*ibid.*)

The District Court, in its first opinion, overturned the Commission's conclusion with respect to each carrier, upon reasoning which is by no means clear, but which seems to proceed upon the dual misconception that "the transportation from the Virginia line to the Pentagon is intrastate", and that the segment of the interstate transportation in the District of Columbia is regulated by the Utilities Commission of the District (R. 915): When the record again came before the Commission, opportunity was taken to set forth the facts in greater detail, and the pertinent orders of the District of Columbia Utilities Commission were received in evidence, confirming the fact that the Coach Company had no intrastate rights in the District and that the other two Virginia Lines had very limited rights of that character (R. 1049–1064).

In its second opinion, the Commission carefully recited the pertinent facts (R. 820–822). It pointed to the testimony of the president of the Transit Company and to the company's tariffs, showing that it is not engaged in intrastate transportation in Virginia. Applications to the Commission for authority to operate between the District and the Pentagon contained assur-

ances that the Transit Company has no operating rights for intrastate transportation in Virginia. As to the Coach Company, the Commission pointed to the orders of the District Commission, which authorized no intra-District transportation. As to the Alexandria and Arlington Lines, the Commission observed that over the Memorial Bridge route they are not authorized to engage in any intra-District transportation, while over the Highway Bridge route they are authorized to engage in such transportation only to a very limited extent, picking up and discharging District passengers south of Maine Avenue opposite the Jefferson Memorial, but having no authority to engage in intra-District transportation in the area north of Maine Avenue to their terminals in the District. (R. 822; see R. 1051, 1054.) The Commission also noted that in numerous proceedings under the Motor Carrier Act, the Virginia Lines have applied for and received various authorizations from the Commission, on the assumption that the Commission had jurisdiction, and these proceedings were subsequent to the establishment of the Washington, D. C., commercial zone (R. 822). Nevertheless, the court below in its second opinion, without added discussion, adhered to its view that none of the appellees was taken out of the commercial-zone exemption by reason of absence of lawful intrastate transportation over their entire interstate route (R. 944).

It seems to us plain beyond debate that the Transit Company and the Coach Line are outside the commercial-zone exemption, and as to them the proviso regarding intrastate operations over the entire length of the route presents no question of statutory construction. It is only as to the Alexandria and Arlington Lines that a question of interpretation can be raised. The Commission stressed the requirement that a carrier must be engaged in intrastate transportation over the "entire length" of its interstate route if it is to be exempted; the argument to the contrary minimizes this requirement and stresses instead the mere requirement that the carrier be "lawfully" engaged in intrastate transportation over the route.

We submit that the Commission's construction is supported by the terms of the proviso and by consideration of its purpose. That purpose was to bring within federal authority interstate bus transportation, even though within a municipality or commercial zone, unless the entire route enjoys lawful local service by the carrier and the route is fortuitously intersected by an interstate line. As originally drawn, the bill contained an outright exemption for commercial-zone transportation of property and persons in interstate commerce. The qualification now contained in the proviso was inserted at the instance of representatives of the National Association of Motor Bus Operators and Public Service Coordinated Transport of New Jersey. See Hearings before

the Subcommittee of Committee on Interstate and Foreign Commerce, House of Representatives, 74th Cong., 1st sess., on H. R. 5262 and H. R. 6016, pp. 82–90, 92–93; Hearings before the Committee on Interstate Commerce, U. S. Senate, 74th Cong., 1st sess., on S. 1629, 1632, and 1635, pp. 208–216, 217–218. The proviso as it now appears was presented by these spokesmen. They pointed out that under the outright exemption in the original bill, important interstate bus transportation might go unregulated. Examples which were suggested included commercial zone transportation in areas surrounding Washington, Chicago, Minneapolis, St. Paul, Cincinnati, and Omaha (House Hearings, p. 86; Senate Hearings, p. 214). When it was suggested in the House hearings by a member of the committee that the commercial-zone exemption should perhaps be eliminated, it was pointed out that with respect to freight there was no objection to the exemption, and with respect to passengers its total elimination would be objectionable from the standpoint of "certain other sections of the country—notably, Kansas City—where street-car lines are operated on both sides of the State line, and they are substituting buses, and those buses are regulated by the States, in which they are operated by both States, and those companies do not desire to come within the provisions of this bill." The spokesman added: "I will present an amendment in a

moment to you which will fix the matter as we think it should be written." (House Hearings, at 84–85.) It is this amendment which is now the proviso in question. In the Senate committee a similar discussion occurred. To the suggestion that no passenger transportation be exempted under the commercial-zone provision, the spokesman replied: "While the amendment suggested by the chairman was the amendment I first intended to suggest, I have been informed there are situations with respect to the carrying of passengers where some exception might well be made. I refer particularly to Kansas City. * * * Therefore the amendment I am going to present to you will exclude such operations from the bill, in metropolitan areas as well as the transportation of property." Senate Hearings, p. 212. The proviso as it now appears was then presented. *Id.*, 214.

The proviso has been interpreted by the Commission in the light of its obvious purpose, to limit the exemption to only those carriers which are performing essentially local bus service on both sides of a state line which happens to divide a community or commercial zone.[4] This approach

[4] In an early decision under the Motor Carrier Act the Commission had announced a similar construction of the proviso, though the expression was not necessary to the decision, since the carrier having only limited intrastate rights in one state had none in the other. *Schwerling Common Carrier Application*, 4 M. C. C. 141.

is particularly appropriate in construing an exemption from the remedial provisions of the Act. *Piedmont & No. Ry.* v. *Interstate Commerce Comm'n*, 286 U. S. 299, 311–312. In view of the almost negligible intrastate rights enjoyed by the Alexandria and Arlington Lines within the District, we submit that the Commission's conclusion as to them is in harmony with the terms and spirit of the proviso and in no event can be said to be erroneous.[5]

2. The second ground for removal of the appellees from the commercial-zone exemption, that relating to the necessity of jurisdiction to carry out the national transportation policy, is fully discussed in the Commission's second opinion, in response to the holding of the District Court that

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[5] In explaining the bill to the Senate, Senator Wheeler stressed the purpose of the exemption "to avoid duplication of regulation over bus operations, such as those conducted by street railways" (79 Cong. Rec. 5651). He pointed out that the Commission is authorized to take jurisdiction over commercial zone operations when they are not regulated by the states (*ibid.*). This is in nowise inconsistent with the view of the proviso taken by the Commission. Senator Wheeler's description of the proviso is not altogether clear. He stated:

* * * "The committee has added an outright exemption of the operations of carriers of passengers in such local areas where such carriers are also lawfully engaged in the intrastate transportation of passengers over the entire length of their interstate route or routes in accordance with the laws of each State having jurisdiction."

Of course, as the history of the proviso shows, it was not added by the Committee as an exemption but was added to remove the exemption otherwise afforded.

its original findings on this point were inadequate (R. 817–819). Among the objects of the national transportation policy, as defined at the outset of the Act, *infra*, p. 56, is the purpose "to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, * * * all to the end of developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense." It is this policy which is made a limitation on the commercial-zone exemption by Section 203 (b), and the policy is to be interpreted and applied in the present case in the context of commercial-zone transportation.

The question thus presented is a relatively simple one: whether the existence of unreasonable fares for transportation to military and naval headquarters employing over 30,000 persons is sufficient to call into play the duty of the Commission to attempt to secure reasonable charges in order that a transportation system may be preserved which is adequate to meet the needs of the national defense. If unreasonable fares to these military headquarters are not within the coverage of the policy of the Act as it applies to interstate commercial-zone transportation, it would be difficult to give meaning to the standard as it governs removal from that exemption. If the fares charged had been $1 for each trip, we suppose

that there would be no doubt of the Commission's authority to investigate and prescribe a reasonable maximum. Once the relationship between unreasonable fares and the national transportation policy is recognized, the Commission's authority to institute such an investigation necessarily follows.

It is not necessary, however, to rely on an abstract relationship. The record shows that the reasonableness of the fares has been a matter of continuing and serious concern to the responsible heads of the military establishments. The investigation itself was undertaken at the vigorous suggestion of the Secretary of War, concurred in by the Secretary of the Navy. Secretary Stimson wrote to Chairman Alldredge as follows (Ex. 7, not printed):

> I believe that * * * the present transportation charges and conditions operate to the detriment of the efficiency and well-being of War Department personnel and against the conduct of the war effort.

A subsequent letter of Secretary Stimson to the Chairman of the Commission contains the following statements (Ex. 11, R. 959):

> For many months the War Department has been seeking to obtain a reduction in the rates of fare between the District of Columbia and the Pentagon Building, the Army Air Forces Building at Gravelly Point and the Navy Annex. For months the

> Commanding General of the Washington Military District, in cooperation with the Navy Department, has sought in vain to have the transportation companies agree to a voluntary reduction in rates.
>
> The present rates are excessive, as the report of Mr. W. Y. Blanning of your Commission shows. They place an unfair financial burden on employees, most of whom work at modest salaries. Glaring inequities permeate the entire rate structure. * * *
>
> * * * I have now arrived at the point where I feel that further attempts to work out fair rates on a voluntary basis would be wasteful. Because of this and because of the War Department's vital interest in having adequate transportation facilities for its many workers and in preventing them from paying exorbitant rates, I bring this matter to the attention of the Interstate Commerce Commission.

At the hearings before the Commission, the War and Navy Departments assumed the task of showing actual dissatisfaction with the fares among civilian employees of the Military and Naval establishments. Exhibits were introduced showing a relatively high rate of separations from the service at these installations as compared with those in accessible locations in the District, and showing the importance of the fares in the light of the low wage levels of the civilian employees (Exs. 23, 34, 37, R. 970, 981, 982, 73–90, 97–101;

Exs. 21, 22, 35, 36, R. 969, 970, 981, 982, 69, 71, 99, 100); and testimony was introduced from employees and personnel supervisors showing dissatisfaction with fares and its effect on employment (R. 366–376, 376–391). The Commission in its second opinion described this evidence (R. 817–818) and declared that it "has been shown that the existing fares are having an effect detrimental to all such services, and there can be no assurance against the charging of excessive fares except by subjecting them to regulation" (R. 819). The efforts of the appellees in this aspect of the case were largely devoted to an attempt to show that dissatisfaction with fares was not an important contributing cause of the separations of civilian employees from the service. This effort was not, we submit, successful, and the Commission so concluded. But more fundamentally, the effort reflects a misconception of the Commission's responsibility and authority. The significance of reasonable rates in the national transportation policy as applied to this situation does not depend on a showing that transportation, or the national defense, is breaking down. If the maintenance of economical mass transportation service to the central headquarters of our military and naval establishments is within the purview of the national transportation policy as it qualifies the exemption of interstate transportation within a commercial zone, then the Commission properly took jurisdiction in this case.

II.

The Commission was not required to refer the investigation to a joint board.

None of the carriers maintained that the proceeding before the Commission should be referred to a Joint Board. The point was, however, raised by the Virginia Corporation Commission, as intervenor. Its motion was denied by the full Commission (R. 159–160).[6]

The pertinent provision of the Motor Carrier Act is in Section 205(a):

> (a) The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits, or licenses; the suspension, change,

[6] Counsel for the Arlington Line stated in argument at the close of the hearings (R. 723) with respect to the question of a Joint Board: "Mr. Commissioner, that issue was raised at the hearing by Mr. Kepner, representing the Virginia State Corporation Commission. No one of the Respondents and no other party joined in that motion. Everybody maintained very stern silence and that was the end of it, as nobody has touched it on brief, so far as I know."

> or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under section 204 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in section 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this part. * * *

It will be observed that where, as here, the operations of the carriers involve not more than three states, the provision for a Joint Board is mandatory as to certain matters, including "complaints as to rates," but is discretionary in other matters. It seems clear that the proceeding was not instituted upon "complaint" as that term is used in the statute, but was rather an "investigation," as to which the Commission was given discretion regarding the convening of a Joint Board. The letters from the Secretary of War to the Chairman of the Commission did not have the character of a complaint in any formal or technical sense, but were at most an expression of

dissatisfaction with existing rates and a request for an investigation (see, *e. g.*, Exhibit 11, R. 959). The order instituting the proceeding recited that "an investigation be, and it is hereby instituted into and concerning the reasonableness and lawfulness otherwise of the fares of respondents * * *." (Quoted in complaint of Virginia Commission in court below, par. V, R. 879.) The hearing was described at the outset by the presiding Commissioner as "an investigation instituted at the request of the Secretary of War * * * into the reasonableness and the lawfulness" of certain interstate fares. The opinion and report of the Commission described the proceeding in the same terms (R. 836).[7] The Rules of the Commission distinguish between hearings on complaints and hearings in investigation proceedings. Rule 5 provides that in complaint cases the carriers complained of are styled defendants, while in investigation proceedings the carriers designated therein are styled respondents. The latter designation was employed in the present case (R. 2). Had this been a complaint case, it would have been necessary for the War and Navy Departments to

[7] There is no inconsistency in the ruling of the Commission that "Since this investigation was instituted at the request of the War Department * * * it is in the nature of a complaint and accordingly it is believed proper that the Department should proceed first and introduce evidence that it may have * * * to be followed by other parties who have evidence of a similar nature, and then by respondents." (R. 10.) The order of presentation was fixed to "expedite the hearing of this case." (*Ibid.*)

draw up a complaint in the nature of a pleading which might be served on the defendant carriers. See Rule 26. These modes of procedure antedated the Motor Carrier Act of 1935 and furnish the background against which the distinction in that Act between complaints and investigations on the Commission's motion is to be understood. The present proceeding was consistently and properly treated as an investigation on the Commission's own motion into the lawfulness and reasonableness of rates, and, so treated, did not require the convening of a Joint Board.

III

The order is not unlawful because it relates in part to the electric lines of the Transit Company

The transportation here involved is conducted entirely by buses so far as the traffic across the Potomac is concerned. Those buses are operated by the Transit Company and the four Virginia Lines. The order does, however, establish fares for the entire interstate transportation, including transportation between points in the District and the bus terminals on the District side, whether by buses or street railways of the Transit Company. Objection has been raised to the order because of its coverage of the street railway transportation as part of the interstate transit.

The Transit Company is not exempted from the provisions of the Motor Carrier Act because of the fact that it operates street railways as well

as buses. Section 203 (a) (14) defines common carrier by motor vehicle to include such motor vehicle operations by common carriers generally. Cf. *Thomson* v. *United States,* 321 U. S. 19, 23–24. Nor is the Commission precluded from exercising authority over electric street railways under the aggregate of its powers conferred by the Interstate Commerce Act. It is true that in a number of particulars that Act excludes certain electric railways from the authority of the Commission; but aside from these, the general jurisdiction of the Commission over common carriers by railroad extends to carriage by electric street railways. In *United States* v. *Village of Hubbard,* 266 U. S. 474, 479–480, Mr. Justice Brandeis enumerated the provisions excluding electric railways and observed that the Transportation Act, 1920, "provided expressly in five sections for the exclusion of certain electric railways from the operation of the powers conferred; and it also differentiated interurban electric railways from street and suburban railways by specific reference to each, although a distinction in treatment was made in only one case." In its report on the bill which became the Motor Carrier Act, the Senate Committee on Interstate Commerce stated (S. Rep. 482, 74th Cong., 1st sess., p. 2): "the Interstate Commerce Act which the Commission administers now applies to steam railroads, electric railways, express companies, sleeping-car companies, pipe

lines, and steamship lines controlled by railroads, and to the joint operations of rail and water lines." Electric railways are not excluded from the authority of the Commission with respect to reasonable rates and charges. The exclusions relate to through routes, construction, extension, and abandonments, issuance of securities, the guarantee to carriers after federal control, and the jurisdiction of the Railway Labor Board.[8] 266 U. S. at 479–480. There is thus no warrant for blanket exclusion of the electric railway operations of the Transit Company from the proceedings here in question.

The issue is a narrower one. It has to do with the provisions of the Motor Carrier Act concerning through routes and joint fares. The Act permits, but does not require, motor carriers to establish through routes and joint fares with

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[8] The exclusion of electric lines from Section 15a, relating to fair return, adverted to in the *Village of Hubbard* case, *supra*, was eliminated in 1933. 48 Stat. 220.

See 2 Sharfman, *The Interstate Commerce Commission* (1931), pp. 15–17:

> The Commission's sweeping jurisdiction over electrics as thus exerted is based not only upon the generality of the language of the original Act in naming the common carriers to which it applies, but also upon the implications contained in subsequent amendments of its substantive provisions. * * * The Commission has uniformly construed these restrictions as limited to the special powers involved, and hence as strengthening rather than weakening the validity of its exercise of general jurisdiction over electric roads engaged in interstate commerce. In this attitude the Commission has received the full support of the courts. * * *

other types of carriers. Section 216 (e).[9] It does, however, empower the Commission, whenever deemed by it to be necessary or desirable in the public interest, to prescribe through routes and joint fares for passenger motor carriers; the Commission may (*ibid.*):

> * * * establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: * * *

So far as transportation solely by the Transit Company is concerned, no question is presented of thorugh routes or joint fares. The issue thus concerns only the requirement of through routes and maximum joint fares between the Virginia Lines and the Transit Company to the extent that part of the operations of the latter are carried on by street railways.

It is important to mark the delimitation of the issue. The Commission has not prescribed a through rate and joint fares between a bus company and a street railway; as would have been true if the Transit Company was wholly of the latter character. Nor has the Commission required a carrier having both buses and street

[9] See 79 Cong. Rec. 5655, 5670 (explanation by Senator Wheeler).

railways to include its street railways in a through route and joint fares when its railway operations had been quite separate from its bus operations. The Commission has simply required, as an incident to the prescription of through routes and joint fares between the buses of the Virginia Lines and those of the Transit Company, that the Transit Company continue to treat its street railway and its bus operations indiscriminately with respect to these routes and fares as long as that treatment continues with respect to the remainder of its operations. Thus under the order, if a passenger from the Pentagon travels on a Virginia Line bus to its District terminal, and there boards a Transit Company bus, he is entitled to a transfer to a Transit Company street car in accordance with the normal practice of the company. Similarly, the order entitles a passenger to transfer directly from a Virginia Line bus to a Transit Company street car, without boarding an intermediate Transit Company bus, since under the company's practice, bus and street car transportation are interchangeable. To have permitted the Transit Company to alter this practice with sole reference to passengers traveling between the District and the Virginia installations would have been to frustrate the admitted authority of the Commission to establish through routes and joint fares for the bus transportation of the Virginia Lines and the Transit Company.

The Commission's order in this regard was, we submit, fully warranted under principles long recognized and frequently applied by this Court in similar cases. In *Houston & Texas Ry.* v. *United States,* 234 U. S. 342, it was argued that the authority of the Commission to deal with discriminations against persons or localities did not include the power to disapprove intrastate rates fixed by a state commission; this Court rejected the argument, despite the express proviso in the Act that it should not apply to transportation wholly within a state. See also *Wisconsin R. R. Comm.* v. *Chicago, B. & Q. R. R. Co.,* 257 U. S. 563. In *California* v. *United States,* 320 U. S. 577, it was argued that the authority of the Maritime Commission to prescribe just and reasonable regulations and practices for wharfingers did not include the power to fix minimum rates; this Court rejected the argument, despite the fact that the statute conferred rate-making power over water carriers and not over wharfingers. In *United States* v. *Pennsylvania R. R.,* Nos. 47 and 48, present Term, it was argued that the authority to prescribe through routes between railroads and water carriers did not include authority to require interchange of cars between them; this Court rejected the argument, despite the fact that the Act imposes specific obligations as to car interchanges only among railroads. In each case the statute was construed and applied to make effective a granted power.

So here, the grant of power to require through routes and joint rates between motor carriers draws with it the power to require that street railway service be interchangeable with bus service in relation to the through routes while it continues to be so interchangeable on the rest of the operations of the Company. This was, in fact, at the basis of the Commission's order in this regard. The Commission stated (R. 842):

> The Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. It conducts bus operations throughout the District and in adjacent territory. The total mileage operated by its busses and street cars is about the same. These operations are commingled and blended. A uniform fare applies to both and transfers are interchangeable between street cars and busses. About 62 percent of the gross revenues of this company is derived from streetcar operations and 38 percent from bus transportation.
>
> In view of the circumstances described, effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares insofar as they apply to the transportation considered. The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Com-*

mission v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said (p. 588):

> "Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them."

Accordingly, we hold that we have jurisdiction to require the application of the fares herein found reasonable to the combined bus-streetcar operations of the Transit Company and to those operations and the bus operations of the Virginia Lines.

It should be added, finally, that the order in this respect is further supported by the provision of Section 216 (e), *supra*, which empowers the Commission specifically to establish "regulations or practices" applicable to transportation of passengers by motor vehicle, and "the terms and conditions under which such through routes shall be operated." Cf. *California* v. *United States*, *supra*; *United States* v. *New York Central R. R.*, 272 U. S. 457, 464.

There is no warrant for the objection, raised below, that the Commission has in effect undertaken to regulate intrastate fares in contravention of the concluding clause of Section 216 (e), which reads: "*Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing

discrimination against interstate commerce or for any other purpose whatever." The only rates regulated by the present order are those in interstate commerce. The fact that the fares are prescribed for passengers who may change from one carrier to another in the District in the course of their interstate trip does not, of course, convert any segment of the transportation into intrastate commerce. *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S. 166, 171.[10]

Nor is there warrant for the objection that the Commission failed to make the requisite finding of public interest for the establishment of through routes and joint fares. The Commission found that "joint fares on this traffic interchanged between the Transit Company and the Virginia Lines are necessary and desirable in the public interest." (R. 850.) Through routes in a practical sense were in effect; the Commission's order did not prescribe changes in routes or facilities; what it prescribed was, essentially, joint rates. These necessarily require through routes. Cf. *Through Routes and Through Rates*, 12 I. C. C. 163, 165; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 139, n. 2. Hence the finding

[10] Reliance by the Commission on the principle of construction applied in the *Chicago, B. & Q. case*, 257 U. S. 563, in no sense indicates a regulation of intrastate commerce; the situation here as between the buses and electric line was said by the Commission to be "analogous to" that as between intrastate and interstate commerce in the former case (R. 842).

of the Commission as to the necessity and desirability of joint rates was entirely adequate.

IV

The order is not unlawful as a prescription of commutation fares.

In the court below appellees argued that certain of the fares prescribed are commutation fares, and that the Commission is without authority to establish such fares. The argument rests on Section 22 of Part I of the Act, made applicable to motor carriers by Section 217 (b). Section 22 enumerates a number of classes of fare reductions and gives assurance that these are not to be treated as unlawfully discriminatory *per se*. This is evident from the form of the section, which reads "that nothing in this part shall prevent * * * the issuance of * * * commutation passenger tickets."[11] The Commission in its second opinion discussed the question fully (R. 822–825) and concluded that the fares prescribed are not commutation fares, and that in any event the Commission does not lack authority to require such fares. These conclusions are, it is submitted, sound.

So far as the Transit Company is concerned, the order prescribes nothing which could be re-

[11] In this form the provision dates from 1889. In the original Act of 1887, it had read "that nothing in this act shall apply to * * *." The change emphasizes the purpose of the provision as simply not to "prevent" absolutely the enumerated types of differentials.

garded as a commutation ticket. The order simply provides that the existing fares shall apply to the transportation here involved. With respect to the Virginia Lines, the order provides for the sale of three tokens for 25 cents or a cash fare of 10 cents. The provision for tokens is a normal feature of such fare schedules and does not have the characteristics of a commutation fare. The provision for the sale of tokens or ticket books, valid for 60 days, good for 12 trips at a total cost of $1.60, is likewise not the establishment of a commutation fare. It constitutes the sole joint fare for the interline transportation. Moreover, as the Commission pointed out, commutation service and fares ordinarily connote suburban and interurban transportation, whereas that here under consideration is essentially urban in character. The token and ticket fares here prescribed are the normal fares for the service which is essentially regular urban transportation.

In any event, the Commission is not forbidden by Section 22 of the Act to require commutation fares. The purpose of the section was clearly explained in *Nashville, C. & St. L. Ry. Co.* v. *Tennessee,* 262 U. S. 318, which involved a cognate provision of Section 22 stating "that nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for

the United States, State, or municipal governments, or for charitable purposes * * *." There the state had fixed relatively low rates for shipments to local authorities. The Interstate Commerce Commission found discrimination, and ordered these rates increased to the level of other rates. This Court sustained the action of the Commission, despite section 22, and thus described the purpose of that section (p. 323):

> The object of the section was to settle, beyond doubt, that the preferential treatment of certain classes of shippers and travelers, in the matters therein recited is not necessarily prohibited * * * Only in this sense can it be said that the section is permissive. It confers no right upon any shipper or traveler. Nor does it confer any new right upon the carrier.

If in the *Nashville* case Section 22 was held not to preclude the Commission from prohibiting reduced rates, despite the language of the section that nothing in the Act "shall prevent" such reduced rates, surely it is even clearer that the section does not preclude the Commission from finding that this type of rate is required in the interest of reasonable charges and service. The argument to the contrary appears to stem from *Lake Shore & Michigan Southern Railway Co.* v. *Smith*, 173 U. S. 684, in which this Court held that a state could not validly prescribe a flat rate for

mileage tickets lower than the max mum rates prescribed by law as reasonable. Not only did that case involve a question under the Fourteenth Amendment rather than under the provisions of the Interstate Commerce Act, and involve a requirement of mileage tickets rather than commutation fares, but it has been discredited by subsequent decisions. In *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S. 134, 149, the Court said, "The authority of that case is not to be extended." And in *Interstate Railway Co.* v. *Massachusetts*, 207 U. S. 79, a state law was upheld which fixed special rates for school children.

The Commission has never doubted its authority to prescribe reasonable commutation fares where the carrier itself has instituted such fares. See the cases cited in the Commission's opinion (R. 824–825). While the Commission has at times indulged in dicta doubting its authority to inaugurate such fares, those expressions are unwarranted by the terms of the Act, as the Commission now recognizes. As was said in *Houston & Texas Ry.* v. *United States*, 234 U. S. 342, 359: "It is urged that the practical construction of the statute has been the other way. But, in assailing the order, the appellants ask us to override the construction which has been given to the statute by the authority charged with its execution, and it cannot be said that the earlier action of the Commission

was of such a controlling character as to preclude it from giving effect to the law." [12]

V

The rates prescribed are not arbitrary or confiscatory

In large part, the maximum rates prescribed by the Commission follow the unofficial recommendations contained in a report (the so-called Blanning Report) prepared by the Director of the Bureau of Motor Carriers of the Commission for a committee of the Office of Defense Transportation. These recommendations were acceptable to the appellees but were rejected by the War Department on the ground that the savings in transportation costs thereunder would be too slight (R. 847; see p. 4, *supra*).[13] The rates there recommended were basically a through rate of 13⅓ cents (12 tickets for $1.60) for through transportation between the Virginia installations and any point in the

[12] There is nothing to the contrary in *United States* v. *New York Central Railroad*, 263 U. S. 603. There the Court, construing an Act of 1922 relating to mileage tickets, held that the Act was not meant to require or encourage the Commission to prescribe the use of such tickets, and that the Commission should have exercised its ordinary discretion in determining whether to require such fares.

[13] In expressing willingness to accept those recommendations the appellees did not concede their reasonableness (R. 1013). At the close of the hearings, however, counsel for the Alexandria and for the Arlington Lines reaffirmed their willingness to accept the Blanning recommendations (R. 720, 724).

District, including interline transportation. The Commission adopted the same rate as the applicable joint rate. The Commission likewise permitted the lower rates charged for particular trans-Potomac routes to be raised to the level of 8⅓ cents (three tokens for 25 cents), or 10 cents per single trip (R. 851). The Commission required, however, that the transportation furnished by the Transit Company, not in combination with the Virginia Lines, should be afforded at the rates prevailing for the company's transportation in the District (three tokens for 25 cents, an unlimited weekly pass at $1.25; and single trips at 10 cents).

In supporting its order with respect to the Transit Company fare, the Commission pointed to the evidence showing that the company maintains a zone fare in the District, that the Virginia installations are essentially part of the business community of the District, and that the average one-way distance traveled by employees at the Pentagon and the Army Annex from their residences in the District to those installations is 6.2 miles, which is "considerably less than one-half the maximum distance over which a passenger may travel for one fare within the District, and compares favorably with the distances from a number of selected points within the District to various military establishments in the District where military personnel and civilian employees of the Department are assigned to duty" (R.

844).[14] The differential in fare between the unitary Capital Transit transportation and the interline transportation under the Commission's order simply continues a differential which had previously existed at a somewhat higher level. The Commission's order removes a number of inequalities growing out of special fares. The War and Navy Departments did not appeal from the Commission's order, and no passengers are attacking it on the ground of discrimination. The order, if affirmed, will protect the carriers against claims of that character. *Arizona Grocery Company* v. *Atchison, T. & S. F. Ry.*, 284 U. S. 370. If complaint should be made on that score in the future, the Commission can make any necessary adjustments. Here it need be said only that differentials between one-line and two-line hauls are not uncommon, and their adoption by the Commission is properly a matter within its "exercise of administrative discretion." *Georgia Pub. Serv. Comm'n* v. *United States*, 283 U. S. 765, 774–775; *Illinois Commerce Comm'n* v. *United States*, 292 U. S. 474, 476–477.

In the court below the appellees, particularly the Transit Company, asserted that the rates are

[14] The average distance traveled by Pentagon employees is based on information obtained from questionnaires returned by 9,500 employees (R. 47, 961). For representative distances between the Virginia installations and War Department establishments in the District, on the one hand, and residential points in the District, on the other, see Exhibit 12, R. 960.

confiscatory. Evidence of the aggregate earnings of each company, offered by the War and Navy Departments, was rejected by the Commission on objection strenuously urged by the carriers (see R. 848).[15] The evidence considered by the Commission was confined to the operations for which the rates are prescribed in the present order. This approach was taken presumably under the authority of *Northern Pacific Railway* v. *North Dakota*, 236 U. S. 585, 604, which held that a state may not validly prescribe a confiscatory rate for a particular class of traffic with the sole justification that the aggregate earnings of the carrier yield a fair return. Whatever may be the limits of that decision, at all events it requires the carrier to show confiscation with respect to "the entire traffic to which the rate applies" (236 U. S. at 604). This the appellees wholly failed to do.

Only the Transit Company introduced any cost evidence. That evidence related to the cost of service on the Company's Pentagon lines between their District terminals and the Pentagon during the first seven months of 1943, and purported to

[15] For objections and rulings, see R. 111–117, 137, 148–149. Exhibits 84–87, 96 (not printed), ruled immaterial, show rate of return for each appellee at present and after application of fare reduction to District level. Before war taxes, returns range from 13 to 96 percent; after all taxes, from 8.6 to 31 per cent. Suggested fare reduction (greater than ordered) would produce returns from 12.7 to 91.1 per cent before war taxes. Rate base is historical cost less depreciation, plus net additions (taken from reports of the appropriate commission). See R. 207–210, 211–237.

show that the cost per passenger was 5.39 cents. (Exhibit 89, R. 1022, 338.) This figure was contradicted by evidence on behalf of the Departments showing that the cost per passenger of the operations on the Pentagon lines independently was only 3.57 cents (Exhibit 101, R. 1040–1041, 634). The computations are subject to the infirmities incident to any effort to make an allocation of joint costs, and the allocations reflect a relatively high cost figure for the Pentagon lines based on their short daily period of operation. (R. 349, 413.) The Commission stated that the cost of this independent operation "per passenger very closely approximates five cents" (R. 845). But, as the Commission emphasized, "the cost of operation of these lines is only a portion of the cost of the through operation here considered. Since the traffic originates or terminates on practically every bus or streetcar line operated in the District the cost are merged with those of the District operations and may not properly be considered as those of an independent operation." (R. 846.)

The argument of the Transit Company rests on an obvious fallacy. The Company argued in the court below that since the cost of the Pentagon service was found to be approximately 5 cents, the rate prescribed was necessarily confiscatory, since no additional fare was allowed beyond the District fare, and the District fare must be assumed to be no more than compensatory for the District

operations. The fallacy lies in the failure to take as the unit of cost the entire transportation between places of residence in the District and the Virginia installations. It is this unit for which fares have been prescribed, and evidence as to the cost of a segment thereof is inconclusive. The Transit Company makes no showing that a fare of 8⅓ cents for the average trip of 6.2 miles is confiscatory. On the contrary, there is abundant evidence showing that it is not. The distance involved, as has been stated, is less than half the maximum distance covered by the zone fare within the District. A War Department consultant, who operates a suburban bus line in the Philadelphia area, testified that a fare of 1¼ cents per mile was reasonable for this type of transportation (R. 238, 241–243, 254). An expert witness for the War Department computed the cost per passenger between the Pentagon and destination as 7.06 cents, which can be corrected on the basis of adjustments indicated by a company witness to 7.8 cents (Exhibit 102; R. 1041; see R. 665–666, 693).[18]

[18] Exhibit 102, containing the figure 7.06 cents, is a Department exhibit based partly on Exhibit 101, which computes the cost per passenger for the Pentagon bus operation alone at 3.57 cents (R. 1040–1041). The latter figure is arrived at by a computation of running expenses per mile and fixed expenses per hour of operation, the basic data being taken from company figures. (See R. 635–637.) The correction referred to was made because the Department study had omitted in its figures for hours of operation the running time between the Pentagon and storage point of the buses, in both directions. With the addition of these hours, the company wit-

Finally, two additional factors cannot be ignored. One is that a fare on a substantial part of the Transit Company's Pentagon operations has been increased, namely, the fare for passengers traveling exclusively on its so-called R–2 (Memorial Bridge) lines without transfers, a distance of 3.5 miles; this fare was previously 5 cents and may be raised under the order to the level of the District fare. The other factor is that the Transit Company will be entitled, of course, to divisions of the joint rate with the Virginia Lines; and there is no warrant whatever for supposing either that the 13⅓-cent joint fare is confiscatory or that appropriate divisions of that fare will not be amply compensatory to the Transit Company with respect to the distance within the District served by it as part of the through routes with the Virginia Lines.[17]

---

ness computed Exhibit 101 to reach 4.36 cents, or about .8 cent above the 3.57 cents shown on Exhibit 101 for the separate Pentagon passenger-trip. (R. 665–666.) The witness brought the cost to 5 cents for this operation upon the addition of a return of 7 per cent on investment. (R. 666.)

The figure 7.8 cents is computed by adding to 7.06, shown in Exhibit 102 for the through trip, the increase of approximately .8 supplied by the company witness.

[17] It appears that over 11 per cent of those who have used the Transit Company facilities alone (not in combination with a Virginia Line) to the Pentagon have paid only a 5-cent fare; see Ex. 18, R. 965; cf. Ex. 19, R. 966–967 (first horizontal line). This fare may be raised under the order. And it appears that of the more than 9,000 passenger trips per day on the trans-Potomac Virginia Lines, the great ma-

The entire case is one plainly falling within the rule announced by this Court in *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38, 53:

> * * * The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing, and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. * * *

CONCLUSION

For the reasons stated the judgment below should be reversed and the order of the Commission affirmed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

PAUL A. FREUND,
Special Assistant to the Attorney General.

APRIL 1945.

---

jority constitute interline transportation involving the Transit Company's District facilities; see Ex. 19, R. 966-967, lines 1(b)–1(e). The Transit Company will receive a division of the 13⅓-cent fare prescribed for this through service.

APPENDIX

The Motor Carrier Act, 1935, c. 498, 49 Stat. 543, as amended:

SEC. 203 (a). As used in this part—

* * * * * *

(14) The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.

* * * * * *

(16) The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

* * * * * *

SEC. 203 (b). Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; * * * or (7a) * * * nor, un-

less and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *

SEC. 205 (a). The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commis-

sion is desirable: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under section 204 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in section 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above, which may arise under this part. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokearge operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commis-

sion, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17. If a joint board to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify.

SEC. 216 (a). It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

SEC. 216 (c). Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by rail-

road and/or express, and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

SEC. 216 (e). Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or

maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

SEC. 216 (f). Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the sev-

eral carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

Act of September 18, 1940, 54 Stat. 899:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable

working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 22, Interstate Commerce Act:

That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; * * *

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, ET AL.

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BRIEF FOR THE APPELLEE COMPANIES.

OPINIONS BELOW.

The first opinion of the District Court, dated May 1, 1944 (R. p. 913), is reported in 55 Fed. Supp. 51; the second opinion of that Court, dated August 25, 1944 (R. p. 943), is reported in 56 Fed. Supp. 670. The report and order of the Interstate Commerce Commission, dated January 18, 1944, appears in the printed Record at page 835; the supplemental report and order of that Commission, dated June 12, 1944, appears in the printed Record at page 813.

STATEMENT OF THE CASE.

This was a proceeding before the Interstate Commerce Commission instituted upon the complaint* of the Secretary of War into the reasonableness and lawfulness otherwise of fares between the District of Columbia and the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point and the Washington National Airport (R. p. 913). The carriers named as respondents in the proceeding (Appellees here) were the Capital Transit Company, the Alexandria, Barcroft and Washington Transit Company, the Arlington and Fairfax Motor Transportation Company and the Washington, Virginia and Maryland Coach Company. The Secretary of War and the Secretary of the Navy appeared as parties, and the State Corporation Commission of Virginia and others intervened in the proceeding (R. p. 836).

After hearing before one Commissioner and an Examiner, the case was argued before the full Commission, and on January 18, 1944, the Commission issued its report and order, which, among other things, eliminated the five-cent fare of the Capital Transit Company (limiting the fare for the Pentagon trip to the then-existing District intrastate fare), reduced the fares of the other carriers, required the establishment of joint fares between the Virginia carriers and the Capital Transit Company and the use of commutation fares (R. p. 835, et seq.). Thereafter, the carriers filed petitions for reconsideration of the order of January 18, 1944, which were denied by the Commission on February 14, 1944 (Orig. Rec. pp. 1383-1463).

Subsequently appellees filed separate actions in the District Court of the United States for the District of Columbia for injunction under the provisions of the Act of October 22, 1913, 38 Stat. 220. On March 20, 1944 the actions were, by order of the District Court, consolidated for hearing.

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* One of the issues in the case is whether this was a complaint proceeding within the meaning of Section 205(a) of the Interstate Commerce Act. Appellees contend the affirmative (R. p. 10).

After hearing and oral argument, the statutory three-judge court handed down a decision holding invalid the order of the Commission of January 18, 1944, chiefly on the grounds that the carriers were exempt from the provisions of the Motor Carrier Act under section 203(b)(8) and that the Commission had not made adequate findings to support its conclusion that the national transportation policy required the exercise of its jurisdiction (R. p. 913). On May 15, 1944, the court made findings of fact and conclusions of law and entered an order enjoining the appellants from enforcing the order of the Commission of January 18, 1944 (R. pp. 919-922).

In May 1944, pursuant to notice, the Commission held a supplemental hearing in the proceeding and on June 12, 1944, issued a supplemental report and order, affirming its order of January 18, 1944 and establishing the same requirements contained in the latter order (R. p. 813). Thereafter Appellees filed motions in the aforementioned actions in the District Court praying that the injunctive order of the court of May 15, 1944 be amended so as to enjoin the supplemental order of the Commission dated June 12, 1944 (R. p. 923). In the same actions, appellants filed a motion for reconsideration of the order of the court dated May 15, 1944 (R. p. 939). After hearing and oral argument, the court, Mr. Justice Arnold dissenting, on August 25, 1944, rendered its decision holding invalid the order of June 12, 1944 on the grounds that the Commission had erred in deciding that the Appellees were not exempt under section 203(b)(8) of the Motor Carrier Act and that the Commission still had not made adequate findings, and could not make adequate findings on the evidence, that the exercise of its jurisdiction was necessary to carry out the national transportation policy (R. p. 943). On September 20, 1944, the court made findings of fact and conclusions of law and entered an order enjoining the appellants from enforcing the order of the Commission dated June 12, 1944 (R. pp. 949-953).

Appellees presented to the court below eleven separate grounds in respect to each of which they alleged the order of the Commission to be invalid. The court passed upon only the first two grounds, that the Commission was without jurisdiction under Section 203(b)(8) and that it had not made adequate findings. If this Court should disagree with the court below on those two points, the other points must then be considered, either upon this appeal or upon remand for the views of the statutory court.

STATUTES INVOLVED.

The pertinent provisions of the statutes involved appear in the Appendix hereto.

THE FACTS.

The Virginia Installations.

The buildings of the War and Navy Departments, referred to in this case as "the Virginia installations," are the Pentagon Building, the Navy Annex, the Army Air Forces Annex and the National Airport. All are located in Virginia.

The Pentagon Building is located adjacent to U. S. Route No. 1, nearly two miles south of the Virginia end of the Memorial Bridge across the Potomac River, and about one and one-half miles west of the Virginia end of the Fourteenth Street Highway Bridge; the Navy Annex is about two miles south of the Virginia end of the Memorial Bridge and about one mile west of the Pentagon Building; the Navy Annex is reached from the Memorial Bridge over Arlington Ridge Road which does not run by the Pentagon; the Army Annex is on the Mt. Vernon Highway about one and three-fourths miles south of the Virginia end of the Highway Bridge, and the Airport is approximately one-half mile beyond (R. p. 950).

The Capital Transit Company is regularly engaged in the transportation of passengers for hire by streetcar and

bus within the District of Columbia and nearby Maryland. It is temporarily engaged in transportation by bus between two designated termini in the District and the War Department Pentagon Building in the State of Virginia. The Virginia companies, that is, the Arlington & Fairfax Motor Transportation Co., Washington, Virginia & Maryland Coach Company, Inc., and the intervenor, Alexandria, Barcroft & Washington Transit Company, are engaged in the transportation of passengers for hire by bus between points in Virginia in the general vicinity of the District, and between designated termini in the downtown business section of the District on the one hand and points in Virginia, on the other hand; all three of the Virginia companies serve the Pentagon Building; the Navy Annex is served by the Alexandria line and the Arlington line; the Army Annex and the Washington National Airport are served only by the Alexandria line. All of the Appellees operate lines over both the Memorial Bridge and the Highway Bridge. The routes over which the Appellees operate in the District were prescribed by the Public Utilities Commission of the District of Columbia (R. p. 949). None of the Appellees has established through routes or commutation fares on these operations.

Operations of the Capital Transit Co.

The Capital Transit Company did not operate in Virginia prior to the opening of the Pentagon Building. On May 19, 1942, the Company, pursuant to conferences with the War Department, applied to the Interstate Commerce Commission for temporary authority to operate a new interstate passenger bus route from the District to the Pentagon Building (Ex. 61; R. p. 180), for which the Commission granted temporary authority for 30 days (Ex. 62; R. p. 181), and the Company filed a tariff showing a one-way fare between Constitution Avenue and 23rd Street and the Pentagon Building (Route R-2) of 5 cents (Ex. 63; R. p. 181) and on May 30th the Company applied to the Com-

mission for an extension of the temporary authority to December 31, 1944, stating that "the War Department wishes and expects Capital Transit Company to continue this operation during the emergency" (Ex. 65; R. pp. 182, 1048). Thereafter the District terminal was changed "at the instance of the War Department" (Ex. 69; R. p. 183) to 19th and C Streets, the authority was extended to December 31, 1944, and a tariff was filed showing the fare to be 5 cents between the named termini (Ex. 69; R. p. 183). Similarly authority was granted by the Commission for the operation from 7th and Constitution Avenue, via the Highway Bridge, to the Pentagon (Route Q-2), the fares named being a District fare (cash, token or weekly pass) plus 5 cents (Ex. 70; R. p. 183).

These services are carried on during rush hours only and there is no return travel except for some few custodial employees (R. p. 169). Passengers are picked up at the terminals and at other points between the terminals for the interstate trip but not for a local trip (R. pp. 189, 190). Forty-one buses are kept at the Pentagon throughout the day (R. p. 493), since this method saves tire mileage and gasoline (R. pp. 193, 194). Some of the other buses are run to their garages after the Pentagon run, and others are assigned to another run (R. p. 483).

The fares of the Company within the District of Columbia are 10 cents cash, 8⅓ cents tokens sold 3 for 25 cents, and a weekly pass for $1.25, all approved by the Public Utilities Commission of the District (R. p. 461). The distance traveled on Route R-2 is 3.5 miles and on Route Q-2 is 3.6 miles (Ex. 12; R. p. 960). A check made on two days showed that for a 24-hour period the Company carried, inbound and outbound, 19,101 passengers over these routes (Ex. 90; R. p. 1023). On these days 81 different buses were used in the morning and 91 buses in the afternoon (R. p. 479).

The Capital Transit fare to the Pentagon Building was determined after study of the cost and after discussion with representatives of the War Department. The esti-

mated cost per passenger was substantially in excess of 5 cents, but to go along with the wishes of the War Department, the Company fixed 5 cents rather than a higher rate (R. p. 164). The President of the Company discussed the matter of transportation with officials of the War Department before the Pentagon was located at its present site (R. p. 176). He discussed it with General Somervell in August, 1941, and wrote him a letter on the subject on August 26th (R. p. 176; Ex. 56). He told General Somervell that,

> "The results of our studies are very disturbing as to the traffic conditions which will result, even leaving out of consideration very substantial additional cost to this Company in carrying its portion of the traffic. * * * If the Quartermaster Depot site (note: the present Pentagon) is utilized, we would be under the necessity of charging an additional 5-cent fare for a journey to that point, although this would not by any means make up for the additional cost to the Company involved in the transportation to that location as compared with a site in West Potomac Park * * * the conclusion is inescapable that serious congestion and delay will result from the location of either one or two buildings with a total capacity of 30,000 to 40,000 employees, in addition to the Navy Building with its 5,000 which is already under construction."

Neither General Somervell nor any other War Department official protested against the proposal that there would be an additional 5-cent fare (R. p. 177). The President of the Arlington and Fairfax Company attended the conferences with the War Department officials when the location of the new building, eventually the Pentagon, was discussed. The bus companies opposed the location of the building across the River (R. p. 456), telling the Department that the transportation cost and difficulties would be large, that they did not believe that adequate transportation could be supplied (R. p. 456). The subject of fares was discussed and all the conferees were duly apprised of the proposed

fare level (R. p. 456). The chief objective of the War Department then was to increase the service irrespective of cost (R. p. 456). The transportation expert who was the War Department consultant at the time that the equipment for the four installations was being discussed (R. p. 280), testified that at that time there was a desperate need for service and his efforts were directed to obtaining service to get people over to the installations. He urged the companies to put on the service to the Pentagon Building (R. p. 281). There was some discussion of fares at that time, but he did not then express the opinion that the service could be operated from the District on a free tranfef from the Capital Transit Company (R. p. 281).

The Interstate Commerce Commission found that the actual cost per passenger per trip to the Company on the Pentagon operation was 5 cents. It said:

> "In the Departments' computation of operating expenses, certain erroneous basic data admittedly were inadvertently employed. It will be unnecessary to discuss the details. Analysis of the data of record leads us to the opinion that the cost as computed by the Transit Company is somewhat high, while the Departments' figure is too low, and the actual cost per passenger very closely approximates 5 cents" (R. p. 845).

The Commission pointed out that its computation of cost made no allowance for a return on investment.

The fare which the Company charges, and which the Commission would set aside, is 5 cents per passenger per trip.

The fares of the Company beyond the District Line in Maryland are zone fares, fixed by the Maryland Public Service Commission (R. pp. 161, 191). The fare system in Maryland is not completely uniform, but the basic plan is 5 cents cash or a 4-cent ticket for approximately 1½ miles (R. p. 431). A tabulation prepared by the American Transit Association, containing material as to suburban fares in the eastern section of the United States (R. p. 178; Ex. 60, R. p. 1015) gave the zones, rates per zone, average

length of the zones and the average rate per mile of 26 companies. The rates vary from 1.93 cents per mile to 5.56 cents per mile.

Operations of the A. B. and W. Co.

The Alexandria, Barcroft & Washington Transit Company, herein sometimes called the A. B. & W., is the only respondent which serves each of the federal installations in Virginia. This company operates bus service between 12th and Pennsylvania Avenue in the District of Columbia and the federal installations in Virginia, as well as various other points in Virginia. It also is engaged in the transportation of intrastate passenger traffic within Virginia. Its standard fare between points served by it in the District of Columbia and the federal installations is ten cents per passenger per ride. It also sells a book for $1.95 which is good for 26 rides between the Army Air Force Annex at Gravelly Point and points served by it in the District of Columbia. Its intrastate fare between the Navy Annex and the Virginia side of the Memorial Bridge is five cents. For the convenience of the passengers and at the request of the Navy Department, passengers to and from the Navy Annex are actually picked up and carried to the Lincoln Memorial without an additional charge over and above the intrastate fare of five cents for this service (R. pp. 499-519).

The A. B. & W. has complete intrastate rights over its entire system within Virginia. It has intrastate rights in the District of Columbia. For example, it may pick up passengers on trips to the District at any stop south of Maine Avenue and carry them to a point north of that Avenue. On the outbound trip, it may pick up passengers at points north of Maine Avenue and carry them to points south of that Avenue. For this intrastate District service the Company charges a ten cent fare. At one time, the company had a five cent fare for service between the Bureau of Engraving and Printing and 12th and Pennsylvania Avenue, but by order of the Public Utilities

Commission of the District of Columbia of April 16, 1932, this fare was increased to ten cents (R. pp. 499-519).

Within Virginia the fares of the Virginia companies to and from points lying beyond these installations are fixed on a zone basis, those of the Alexandria line, for example, extending in a series of 5-cent zones to a maximum of 35 cents at Fort Belvoir, Va. Between the Pentagon and the Navy Annex a 5-cent fare applies;, and a 5-cent fare between Rosslyn, Va., and the Pentagon and Navy Annex is likewise maintained by the Arlington line, the only carrier rendering this service (R. pp. 837-839).

The A., B. and W. is regulated by the Virginia Corporation Commission as to all of its operations within Virginia and by the Public Utilities Commission of the District of Columbia as to all of its operations within the District.

Operations of the Arlington & Fairfax Motor Transportation Company.

The Arlington & Fairfax Motor Transportation Company operates throughout the central part of Arlington County, Virginia, and in and out of the District of Columbia (R. p. 444). So far as the installations involved in this proceeding are concerned, the fare structure is 10 cents from any point on the line. The company has a 5-cent fare from Rosslyn to the Pentagon and to the Navy Building, from the intersection of Lee Boulevard and Washington Boulevard to the Navy Building, and from the Navy Building to the Pentagon Building. From the District of Columbia to all points along its line, the fare is 10 cents. Originally this latter fare was 15 cents, filed with the Interstate Commerce Commission. In the spring of 1933 the company reduced the rate to 10 cents (R. pp. 444-5). The company operates 54 buses and has approximately 40-odd miles in the system (R. p. 447). It operates intrastate service in Virginia and in the District (R. p. 447).

The Arlington and Fairfax is regulated by the Virginia Corporation Commission as to all of its operations within

Virginia and by the Public Utilities Commission of the District of Columbia as to all of its operations within the District.

Operations of the Washington, Virginia & Maryland Coach Company.

The Washington, Virginia & Maryland Coach Company operates in Arlington County, Virginia, and in Fairfax County to points such as Falls Church and Fairfax, and into a terminal at 11th and E Streets in the District of Columbia. It serves the Pentagon Building under temporary authority for rush-hour service only. Its fare from the District of Columbia to the Pentagon Building is 10 cents, which is the same fare charged to other Virginia points within the same zone. The rate was filed with the Virginia Commission and with the Interstate Commerce Commission (R. pp. 437-9). This zone fare was originally 15 cents and was reduced by the company to 10 cents during the depression (R. p. 441).

Except as above-noted, the Virginia companies have never instituted commutation fares or fares for multiple trips. None of them has ever made an arrangement, express or implied, for through routes in conjunction with Capital Transit.

Negotiations with O. D. T. and Others.

In September, 1942, the Appellee Companies began a series of conferences with the Washington Regional Committee of the Office of Defense Transportation. This Committee was composed of a representative of the O. D. T., the Director of Vehicles and Traffic for the District of Columbia, an attorney who represented the State of Maryland, and a representative of the Public Roads Administration, who acted as secretary of the Committee. This Committee was concerned primarily with ways and means of bringing about greater utilization of the existing facilities for the transportation of passengers by motor vehicle between

points in the District of Columbia and points in Virginia. After several meetings with the Committee had been held, it advised Appellees that the War and Navy Departments had complained that the cost of transportation for its personnel between the federal installations involved and points in the District of Columbia are excessive. Although recognizing that it had no authority or duties in connection with the question of fares, the Committee nevertheless acted as a sort of negotiating medium between the War and Navy Departments and Appellees in an effort to satisfy the claims of those departments and incidentally establish a system of fares which might have the effect of a more even distribution of the traffic and thereby improve the utilization of the bus equipment (R. pp. 177, 458).

In October, 1942 the Regional Committee suggested that the Virginia bus companies establish a joint ticket fare of fifteen cents per ride in conjunction with the Capital Transit Company good between all points in the District of Columbia and the federal buildings in Virginia already described (R. p. 177). All of the Appellees acquiesced in this request after conferences and discussions among themselves; but by that time the Regional Committee had reached the conclusion that fifteen cents was not an appropriate fare as they felt that the Army and Navy would not be satisfied with that fare and requested that the Appellees institute a joint fare of 14-1/6 cents per ride. However, before this suggestion was acted upon the Regional Committee again changed its mind and requested that a joint fare of 13⅓ cents be established (R. pp. 177, 458). The latter proposal was considered by the Companies at various times and on March 9, 1943, they addressed a letter (Ex. 59; R. p. 1012) to the Regional Committee in which they agreed to establish the joint fare of 13⅓ cents per one-way trip under the conditions outlined in that letter, the details of which need not be stated here (R. p. 177).

Meanwhile and before that letter was written, Senator Burton of the District Committee of the Senate arranged a

a conference with the interested companies at which he suggested the advisability of selecting a third authority to survey the entire situation and make recommendations. As the result of the suggestions made at that conference, Mr. W. Y. Blanning, Director of the Bureau of Motor Carriers of the Interstate Commerce Commission made a survey. A copy which contains the recommendations of Director Blanning, was introduced of record as Exhibit 57 (R. p. 999). He recommended, among other things, that the Appellees establish a joint ticket arrangement consisting of a book of twelve trips to be sold at $1.60 per book, which is the equivalent of 13⅓ cents per ride or trip. He also recommended that the use of the five cent intrastate fare of the A. B. & W. from the Navy Annex to passengers discharged or picked up at Lincoln Memorial, and the five cent fare of the Washington, Virginia & Maryland Coach Company between the Pentagon Building and Rosslyn, be eliminated.

The War and Navy Departments declined to approve either the suggestion of the Regional Committee or the recommendations of Director Blanning.

Thus it will be seen that these protracted efforts to bring the negotiations to fruition came to naught.

Employees at Virginia Installations.

Statistical data as to employees at the War and Navy Departments consisted, first, of data as to salary classifications (Exs. 21, 22), the first being the percentages of War Department employees by service and grade, and the second being based on a sample of 184 cases, said to be a representative sample (R. p. 71). There are twenty-odd thousand civilian personnel at the Pentagon Building (R. p. 71). The second part of this data was based on a questionnaire, a sample of which is Exhibit 33 (R. p. 979), which was distributed to personnel at the War and Navy Departments and which asked for data as to transportation used getting to and from work, and as to fares and time spent in traveling. From the returns to these questionnaires officers in

the Departments made tabulations (Exs. 12, 13, 17, 18, 19; R. pp. 960, 961, 964, 965 and 966), which these officers testified showed the comparative distances traveled, an analysis of the use of passes of the Capital Transit Company; an analysis of one-way trans-Potomac fares and an analysis of passengers carried and fares paid by Pentagon employees. Exhibit 13 (R. p. 961) purported to show that the average distance traveled from an employee's residence to the Pentagon Building by Route R-2 was 6.12 miles and by Route Q-2 6.52 miles. Exhibit 14 (R. p. 961) showed that there were 32,132 employees, civilian and military, at the Pentagon in May, 1943, and 30,993 in July, 1943. Exhibit 19 (R. p. 966) showed that out of 28,916 passengers who traveled to the Pentagon Building on a sample day, 9,793 used the Virginia companies, paying a 10-cent fare, and 19,123 used the Capital Transit, paying a 5-cent fare.

I. C. C. Order of January 18, 1944.

On January 18, 1944, after argument before the full Commission, the Interstate Commerce Commission issued its report and order (R. pp. 835 et seq.).

The Commission divided (R. pp. 836, 851, 852, 853, 854, 856); four Commissioners joined in the majority finding; two concurred in the report; one concurred in the majority finding; one dissented in part; and two, including the Commissioner who heard the case, dissented.

The majority ordered that the Capital Transit Company carry people from any point in the District to the Pentagon Building for no fare in addition to the District fare, that all the companies establish a joint fare on a through route at 13⅓ cents; and that the Virginia company fares be 10 cents cash or 3 tokens for 25 cents (R. pp. 850-1).

Two of the Commissioners concurred in the report of the Commission and said that it was very important that the jurisdictional questions which are raised should be determined; they said that they were not satisfied with the findings of the Commission and that to require 8⅓ cents for

a part-way haul by the Virginia companies over the same route, or to put it another way, an 8⅓-cent fare over the whole route for the Capital Transit Company and 13⅓ cents over the same route on the lines of the other companies, "seems to lack something in reasonableness." These two Commissioners would have established a 10-cent fare on all companies between any point in the District to the Virginia installations. One Commissioner concurred in the findings of the majority and said that his idea was quite simple, that all the Virginia installations ought to be included in the base zone which now consists of the District of Columbia. Another Commissioner dissented in part. He said that he would find 13⅓ cents a reasonable fare for all the companies. Two Commissioners, including the Commissioner who heard the case dissented. The Commissioner who heard the case said that the Commission was without jurisdiction over street railways, and that this case would set a precedent on the point that the Commission could order a fare for the street railway system. He said that the Commission had no authority to require commutation tickets, and that he would have found a reasonable joint single-trip fare of 15 cents; that if the Commission had the power to require commutation tickets (he believed that they had no such power), he would have approved the token fares prescribed for the Virginia companies (R. p. 855). This Commissioner also said that he would not extend the District of Columbia fares. His words in that regard were that it was "an unwarranted enlargement" of the District fare zone, and that it was "an unjustifiable extension" of the District intrastate basis of fares. Again he said that the order of the majority would require the company to perform an extended service involving considerable cost without any compensation whatsoever; that the order of the majority unduly preferred one group of patrons to the detriment of the others; that the fare for Capital Transit passengers was about 60 per cent of what the patrons of

the other companies would pay, remarking that "there is and can be no justification for such disparity." Finally he said that the order was without lawful authority, that the fares prescribed were unreasonably low, that the order was unduly preferential and might well bring about a deterioration, if not a complete discontinuance, of the service.

The order was to be effective March 13, 1944, and the Appellees were required to file and post schedules of the new fares fifteen days prior to that date. On February 14, 1944, the Commission denied applications of the Appellees for reconsideration and vacation of the order.

Order of the District Court.

Appellees brought action before the District Court of the United States for the District of Columbia, praying that the order of the Commission of January 18, 1944, be set aside as null and void (R. pp. 828, 858, 869, 877), the A., B. & W. Company intervening (R. p. 885). After hearing, the statutory three-judge court, composed of Associate Justice Miller of the United States Court of Appeals of the District of Columbia and Associate Justices Bailey and Letts of the District Court of the United States for the District of Columbia, rendered a unanimous opinion (R. p. 913), findings of fact and conclusions of law (R. p. 919), and issued its order granting a permanent injunction against the order of the Commission of January 18, 1944 (R. p. 922).

Supplemental Report of the Commission.

The Commission, taking notice of the opinion of the District Court, reopened the proceeding for further hearing and reconsideration (R. pp. 772, 775). Thereafter, further hearing was held (R. pp. 776-813) and the Commission issued a supplemental report (R. 813) and an order dated June 12, 1944, in which the Appellees were required to establish fares which would not exceed the fares found reasonable in the report of the Commission dated January 18,

1944 (R. p. 827). Commissioners Patterson and Miller dissented (R. pp. 825-6). In its supplemental report, the Commission found that the transportation involved is not excluded from the application of the Interstate Commerce Act by Section 203(b)(8) thereof, and that the application of the Act to this transportation is necessary to carry out the national transportation policy, and it affirmed the findings and conclusions in its prior report (R. p. 825). In this report, the Commission gave consideration to the decision of the District Court on two points, (1) the removal of the commercial zone exemption (Section 203(b)(8) of the Interstate Commerce Act) and (2) the extent to which Appellees are engaged in intrastate transportation. On the first point, the Commission found that the Virginia installations "may be characterized as the nerve center of the war effort in this country" (R. p. 818), and said:

> "It is clear that in order to ensure for the transportation here considered fares that do not exceed a level operating against the full efficiency of the important services performed at the Virginia installations in the conduct of the war, it is essential that the fares be subjected to regulation. As above said, it is considered and has been shown that the existing fares are having an effect detrimental to such services, and there can be no assurance against the charging of excessive fares except by subjecting them to regulation." (R. p. 819.)

It further held, contrary to the finding of fact of the District Court, that the Capital Transit Company "is not engaged in any intrastate operations in Virginia, either authorized, or unauthorized, by that state, over its interstate routes between the Pentagon and the District" (R. p. 821). It found that the W., M. & V. Company is not engaged in any intrastate operations in the District of Columbia over its interstate routes between the Pentagon and the District (R. p. 821). It further found that the A., B. & W. and the Arlington & Fairfax lines are not authorized to engage in any intra-District transportation over their Memorial

Bridge routes and that over their Highway Bridge routes, "they are also not authorized to engage in such transportation, except between authorized stopping points * * *" (R. p. 821), concluding:

> "We are of the opinion that the said lines are not engaged in intrastate transportation, either authorized, or unauthorized, by the District, over the entire length of their interstate routes herein involved." (R. 822.)

Further Order of the District Court.

Thereupon appellees applied to the District Court for an amendment of the language of the injunctive order of the court (R. 923), and after hearing, the statutory three-judge court, Mr. Justice Arnold of the United States Court of Appeals for the District of Columbia sitting in the place of Mr. Justice Miller, issued its opinion (R. p. 943) and findings of fact and conclusions of law (R. p. 949), Mr. Justice Arnold dissenting, and issued its order setting aside and permanently enjoining the order of the Commission of June 12, 1944 (R. p. 952).

SUMMARY OF THE ARGUMENT.

The basic effects of the Commission's orders are:

1. The present interstate operations of these bus companies are between the Virginia installations and designated downtown termini in the District. The Commission attempts to treat the operations as beginning, or ending, at any point in the District of Columbia at which the passenger may initially board a street car or bus, or may finally alight therefrom.

For example, a passenger who wants to go from 14th and Park Road to the Pentagon uses a Capital Transit street car from 14th and Park Road to a downtown point; he then boards a Pentagon-bound bus of some one of the companies and pays a new fare. There are no through routes or arrangements for through carriage. At present

the interstate operation of the companies begins and ends at the termini. The Commission would make it begin and end at 14th and Park Road, in the example cited.

2. In respect to the Virginia companies, the Commission would reduce their fares from the Virginia installations to the downtown termini, from 10 cents cash, by requiring them to sell tokens three-for-a-quarter, but without disturbing the 10-cents cash fare.

3. As to the Capital Transit Company, the Commission would expand the District of Columbia so as to include the Pentagon Building. The Commission says quite frankly that this is the basic idea in its treatment of that company. The District fares are fixed by the Public Utilities Commission of the District, and are 10 cents cash, tokens at 8⅓ cents or a weekly pass costing $1.25.

4. The Commission directed that books of twelve one-way tickets be sold for $1.60 (which is 13⅓ cents per trip), good for a trip between any point in the District and any of the Virginia installations via the Capital Transit in conjunction with any one of the Virginia companies. Thus the total effect of the orders is that the fare to and from the Pentagon is 13⅓ cents if the passenger goes part way via a Virginia company but 8⅓ cents or less if he goes all the way by Capital Transit.

In the Court below Appellees presented, seriatim, numerous objections to the validity of the orders of the Commission, maintaining that any one objection, if sustained, was fatal to the orders. The court below passed upon only one jurisdictional point. It held that the Commission had no jurisdiction because this is urban mass transportation, as the Commission itself said, and it was not the intention of Congress to confer jurisdiction on the Commission to regulate fares for transportation of that nature. The court held (1) that these operations are wholly within a commercial zone already established by the Commission, (2) that the companies are lawfully engaged in the intrastate trans-

portation of passengers over the entire length of their interstate routes (R. pp. 920-21), (3) that regulation by the Commission is not necessary to carry out the national transportation policy, and (4) that the effect of the Commission's order is to regulate fares for intrastate transportation in violation of the statute (R. pp. 915-16). The court further held that the Commission had made no findings, and could make no findings on the evidence, to sustain a conclusion that its jurisdiction was necessary to carry out the national transportation policy.

Section 203(b) (8) of the Interstate Commerce Act[1] specifically provides that,

> "* * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part * * * apply to: * * * (8) the transportation of passengers or property in interstate or foreign commerce wholly * * * within a zone adjacent to and commercially a part of any such municipality * * *, provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction: * * *."

It is undisputed that the transportation here involved lies entirely within the Washington commercial zone as fixed by the Commission. 3 M. C. C. 243. Two of the carriers here involved are unquestionably engaged in intrastate transportation of passengers over the entire length of their lines. Appellees contend, and the court below found, that the other carriers are likewise so engaged, and that, in any event, the order of the Commission is a unit and applies uniformly to all the carriers here involved. Local urban

[1] The Motor Carrier Act is Part II of the Interstate Commerce Act, being an amendment thereto by an Act of August 9, 1935. Section 203(b)(8) is 49 Stats. 543; 49 U. S. C. A. 303(b)(8).

mass transportation does not involve the national transportation policy, which, according to the statute, is concerned with a *national* transportation *system*.

The argument of Appellees in respect to the second point is that the findings of fact made by the Commission, even if valid on the evidence, were inadequate to support the conclusion that regulation by the Commission is necessary to the national transportation policy. The findings were that the employees at the Virginia installations are doing important war work, that most of them are in the low income group, that they are dissatisfied with the bus fares and that, in the opinion of the Secretaries of War and Navy, such dissatisfaction impedes the war effort. No findings were made, or could be made, that the fares were high for the service rendered; in fact, the Commission specifically found that the actual cost to the Capital Transit Company, without any return on the investment, was 5 cents per passenger per trip, and the fare of that company is only 5 cents per passenger per trip; the Commission made no findings as to any other costs. No findings were, or could be, made that the fares yielded an excessive return to the companies, or that the service rendered was inadequate or not satisfactory. Appellees contend that it would be an amazing and novel doctrine if it be held that where the intra-zone customers of a bus company are engaged in important work in commerce, or the postal service, or national defense (these three being mentioned with equal emphasis in the definition of the national transportation policy), and such customers are underpaid, and they are "dissatisfied" with the bus fares, and their employer is of the opinion that their dissatisfaction impedes their work, such facts alone are sufficient to invoke federal regulation under the terms of the Interstate Commerce Act.

The Company Appellees will discuss the foregoing two points, but they rely also upon the brief and argument presented upon these points by the Appellee State Corporation Commission of Virginia.

If the Court should concur in the opinion and decision of the court below upon either or both of the forgoing two points, consideration of the case is at an end. If, however, the Court be of the contrary view on both of the foregoing points, it will be necessary to consider the remaining contentions of Appellees, not discussed by the court below. Appellees respectfully urge that such consideration be had upon a remand to the District Court for its views. However, since Appellants have discussed some of the points in their brief, Appellees must state here their views in the same respect.

The other points are:

(a) Section 216(e) of the Interstate Commerce Act[2] provides:

> "That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

The Commission is thus categorically denied authority to prescribe or regulate for any purpose whatever any fare for intrastate transportation or any service connected with intrastate transportation. In attempting to direct that the District of Columbia fares of the Capital Transit Company be extended to cover transportation to the Pentagon Building without any additional charge, the Commission is clearly attempting to regulate the service connected with those intrastate fares.

(b) The Commission assumed, without any evidence to support the assumption, that through routes now exist between the Virginia bus lines and the Capital Transit Company.

(c) The authority of the Commission to prescribe joint fares and through routes is limited by Section 216(e) of

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[2] 49 Stats. 558; 49 U. S. C. A. Sec. 316(e).

the Act to through routes and joint fares of common carriers of passengers by motor vehicle.

(d) The Commission is without power to determine the reasonableness of through fares of one or more carriers unless through routes have been voluntarily established. Even where through routes have been voluntarily established, the authority of the Commission to prescribe *joint* fares is limited to motor common carriers of passengers. (Sec. 216(c))

(e) The Commission is without authority, under the statute, to order joint fares between a motor carrier and an electric street railway.

(f) The Commission is without authority to direct and order commutation fares when the carriers have not voluntarily established such fares.

(g) In ordering that the fare over Capital Transit lines from the Pentagon Building to points in the District of Columbia be at District of Columbia rates (cash 10 cents, tokens 8⅓ cents, pass $1.25 a week), but that the fares for the same trip, over the same routes and with the same service, in part over the lines of the Virginia companies and in part over the lines of the Capital Transit Company, be 13⅓ cents, the Commission was illegally discriminatory between passengers and between the companies.

(h) There is no evidence, substantial or otherwise, to support the findings of the Commission that the employees at the Virginia installations are dissatisfied with the bus fares or that the fares impede the war effort. On the contrary, the evidence affirmatively proves the absence of such dissatisfaction.

(i) Even if the Commission had jurisdiction, and even if its findings as to the dissatisfaction of employees and the importance of the work being done at the Virginia installations were valid findings, they do not constitute a legal basis for a reduction of bus fares. Transportation rates cannot be fixed by regulatory authority upon the sole basis of the satisfaction or dissatisfaction of specific groups of

customers, without some foundation in fact as to an excess of fares above the value of the service rendered or above a fair return to the company.

(j) This proceeding should have been referred by the Commission to a Joint Board, in accordance with Section 205(a) of the Interstate Commerce Act,[3] the instant proceeding being a "complaint" matter within the meaning of the statute. On this point, the Company Appellees rely upon the argument and brief of the Appellee State Corporation Commission of Virginia.

(k) The finding of the Commission that the fares of the Appellees are unjust and unreasonable is not supported by the evidence, is contrary to the evidence, and is arbitrary and capricious.

ARGUMENT.

I.

The Commission Does Not Have Jurisdiction Over the Operations Here Involved.

The decision of the court below was predicated upon a jurisdictional issue which Appellees view as involving, among others, the following points:

(a) The Commission does not have jurisdiction over intra-terminal transportation, *as such*, under any section of the Act.

(b) The Commission cannot, under the facts in this case, acquire jurisdiction over intra-terminal transportation, as such, by reference to the National Transportation Policy.

By intra-terminal operations, we refer to transportation which originates and terminates wholly within a single community, such as the commercial zone of Washington,

[3] 49 Stats. 548; 49 U. S. C. A. Sec. 305(a).

D. C., as prescribed by the Commission in 3 M. C. C. 243. By intra-terminal transportation, as such, we refer to transportation which is physically performed within a single community, and in addition to that characteristic, such transportation has no connection directly or indirectly with any prior or subsequent transportation to or from any point beyond the single community.

Local cartage for local merchants and local transportation of passengers are examples of intra-terminal transportation, as such. "Pick-up and delivery" or "door to door", transportation by railroads, express companies, line-haul motor carriers and water carriers, are examples of segments of transportation which are physically local but are in fact, and under the Interstate Commerce Act, merely the continuation of line-haul transportation to or from points beyond commercial zones. Such transportation is subject to the Commission's primary jurisdiction where there is an arrangement for continuous carriage to or from points beyond a commercial zone and was not exempted under Section 203(b)(8).

But a line-haul carrier may own or control a local carrier and may perform local service without a tariff arrangement for continuous carriage, and if and when a line-haul carrier so operates the local transportation agency or any other activity so as to defeat any of the provisions of the Act, then the Commission may exercise its secondary jurisdiction to enforce the Act consistent with its specific provisions and the National Transportation Policy.

Recapitulating, we contend that the jurisdiction of the Commission is, in every conceivable circumstance, bottomed on jurisdiction over a line-haul carrier or by virtue of common control management or an arrangement for continuous carriage to or from a point beyond a commercial zone. Jurisdiction of the Commission can never arise out of a local activity which is unconnected directly or indirectly with transportation beyond the local area. The Commission has

long exercised its secondary jurisdiction under appropriate circumstances[4] and this Court has consistently approved.[5]

(a) *The Commission Does Not Have Jurisdiction Over Intra-terminal Transportation, As Such, Under Any Section of the Act.*

Historically Congress has avoided intrusion in the domain of local affairs and has departed from this policy only in the light of demonstrated necessity. This Court has consistently given recognition to that legislative policy.

This Court has held the Commission to be without jurisdiction over local affairs even though interstate commerce across state lines was involved and the literal provisions of the Act were broad enough to confer jurisdiction over the local subject matter.

The Act of 1887 gave the Commission jurisdiction to regulate railroads. The Commission in 1909 concluded that street-railways came within the sweep of the term "railroad" and thereupon undertook to regulate interstate street railway fares between Omaha, Nebraska and Council Bluffs, Iowa. In 1912, this Court reversed the Commission on the jurisdictional question, which was determined by reference to the intent of Congress.[6]

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[4] Washington, D. C.—Store Door Delivery, 27 I. C. C. 347
Baltimore, Md.—Store Delivery, 30 I. C. C. 388
Tariff—Motor Truck or Wagon Trans., 91 I. C. C. 539
Constructive and Off-Truck Freight Stations, 156 I. C. C. 206
St. Louis Transfer and Drayage, 177 I. C. C. 316
Coordination of Motor Transportation, 182 I. C. C. 263.

[5] Ellis v. I. C. C., 237 U. S. 434, 59 L. ed. 1036
Baltimore & Ohio R. Co., 305 U. S. 507, 83 L. ed. 318.

[6] Omaha Street Ry. v. U. S., 230 U. S. 324, 57 L. ed. 1501 wherein the Court said:

> "If the scope of the act is such as to show that both classes of companies were within the legislative contemplation, then the word 'railroad' will include street railroad. On the other hand, if the act was aimed at railroads proper, then street railroads are excluded from the provisions of the statute. Applying this universally accepted rule of construing this word, it is to be noted that ordinary railroads are constructed on the

In the present case the dissenting members of the Commission recognized the similarity of issues presented by the present case, with those which were involved in the *Omaha* case, *supra*, and said (R. p. 854):

> "An urban or suburban street railway is local and for the use of a single community even though that community is divided by a state line * * *".

The principle remains the same, regardless of the fact that a local street railway may operate both street cars and street buses.

The exercise of federal jurisdiction in derogation of state and local powers is seldom if ever implied.[7] When, in 1935, Congress enacted the Motor Carrier Act (now Part II of the Interstate Commerce Act) it went unusually far in specifically preserving local jurisdiction over local matters.[8]

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companies' own property. The tracks extend from town to town, and are usually connected with other railroads, which themselves are further connected with others, so that freight may be shipped, without breaking bulk, across the continent. Such railroads are channels of interstate commerce. Street railroads, on the other hand, are local, are laid in streets as aids to street traffic, and for the use of a single community, even though that community be divided by state lines, or under different municipal control. When these street railroads carry passengers across a state line they are, of course, engaged in interstate commerce, but not the commerce which Congress had in mind when legislating in 1887".

[7] City of Yonkers v. U. S., 320 U. S. 685, 88 L. ed. 241, 245:

"Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears."

[8] Sec. 203(b)(8), Exemptions of numerous local operations.
Sec. 204(a)(4a), Exemption of physically intrastate operations.
Sec. 206(a), State certificates for physically intrastate operations.
Sec. 216(e), "Provided however, That nothing in this part shall empower the Commission to prescribe or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

Despite the sweeping and inclusive directions and powers to regulate motor carrier facilities and services and to develop economical and safe transportation, without discriminations or preferences, which are embodied in Part II of the Interstate Commerce Act, this Court held that the police power of South Carolina was unimpaired and that the Interstate Commerce Act could not, by implication, be construed as an exercise of federal power in derogation of state powers, regardless of how burdensome or destructive the exercise of state powers might be.[9]

By Section 203 (b) Congress specifically provided numerous exemptions, some absolute and others conditional, and generally these exemptions related to local transportation. The provisions of Section 203 (b) (8) provided certain qualified and conditional exemptions for transportation within a municipal area or a commercial zone.[10]

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[9] South Carolina v. Barnwell, 303 U. S. 177, 82 L. ed. 734. In that case South Carolina limited the width of trucks to 90 inches despite the fact that every other state in the Union permitted a width of 96 inches and all trucks used in the movement of commerce were 96 inches wide.

[10] Sec. 203(b): "Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * *

(7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to:

(8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction."

Testing the asserted jurisdiction of the Commission by the facts in this case, which involve nothing but local matters, Appellees contend that there is nothing to support such jurisdiction and the Commission has made no findings which can possibly support conditional jurisdiction, or stated another way, support removal of the exemption.

To qualify for the exemption under Section 203 (b) (8) there must *not* exist "a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone * * *." In this case and as between the motor carriers and street railway here involved there is no "common control, management, or arrangement for a continuous carriage" beyond the commercial zone. So the Appellees qualify for the exemption under that test.

But grounds for jurisdiction, under paragraph (8), are said to arise from the further provision requiring passenger carriers to be engaged "in intrastate transportation of passengers over the entire length of such interstate route".

The provisions of Sec. 203(b)(8), if applicable under any circumstances to mass transportation within a commercial zone, nevertheless qualify and condition the jurisdiction of the Interstate Commerce Commission in clear and unambiguous terms insofar as two of Appellees here are concerned. The Interstate Commerce Commission can never have jurisdiction if the local carrier operating within a commercial zone is engaged in intrastate transportation over the entire length of its interstate route. The Arlington and Fairfax Transportation Company conducts its entire operation within the commercial zone of Washington, D. C., and is engaged in the intrastate transportation of passengers over every inch of its lines in both Virginia and the District of Columbia (R. p. 447) and the Alexandria Barcroft and Washington Transit Company is also engaged in intrastate transportation over every inch of its lines in Virginia and the District of Columbia (R. p. 500). Although some of the lines of the latter company extend

somewhat beyond the commercial zone, the transportation here involved is wholly within that zone.

In the exercise of their respective jurisdictions, the Commissions of Virginia and the District restrict or specify the points at which passengers are to be picked up or discharged, which is in effect both a restriction and the imposition of a duty. The Interstate Commerce Commission seeks to distinguish between intrastate transportation over the entire length of the interstate route and the points at which passengers may board or leave the buses. Here, intrastate transportation is actually required and performed over the entire length of the route and the regulation of the local Commission fixing the stops does not concern the Interstate Commerce Commission. The local Commissions can and do change their requirements as to stops from time to time, and without consulting the Interstate Commerce Commission, and they act independently, on authority of local law and regulation. Obviously the asserted jurisdiction of the Interstate Commerce Commission cannot stand on such tenuous construction of the statute nor on the momentary effective orders of the state Commission over which it has no control whatever. While the Interstate Commerce Commission has argued jurisdiction on such grounds, nevertheless it has recognized the weakness of its position and concluded with another equally untenable assertion of jurisdiction under the Transportation Policy and with reference to "national defense".

The fact that the Interstate Commerce Commission has assumed jurisdiction over all of the carriers, including two which are clearly engaged in the intrastate transportation of passengers over the entire length of their routes, indicates that the Commission did not base its asserted jurisdiction entirely on that qualifying provision of Section 203 (b) (8).

Before laying aside the provisions of Section 203 (b) (8) having to do with the intrastate transportation of passengers, it will be appropriate to refer to the legislative history

of that qualification to the general exemption. That qualification was a committee amendment to S. 1629, which became the Motor Carrier Act of 1935. The bill as originally drawn contained the present general exemptions for transportation "wholly within a municipality or between contiguous municipalities, or within a zone adjacent to and commercially a part of any such municipality or municipalities." It also contained the exception to the exemption, having to do with common control and arrangements for transportation beyond the commercial zone.

Certain operators of bus lines in New Jersey, serving areas adjacent to Philadelphia and New York City, viewed the exemption within undefined commercial zones as possibly permitting exempt transportation for great distances from Philadelphia and New York City, because of the presence of numerous contiguous municipalities and the extensive commercial zones claimed by Chambers of Commerce.[11] They opposed exemptions for distances of 50 miles or more from these cities. Therefore they proposed the qualification providing that the bus lines should hold intrastate rights before the interstate exemption should become operative.[12]

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[11] New York Commercial Zone, 1 M. C. C. 665, 2 M. C. C. 191.

[12] Hearings before Senate Committee on Interstate and Foreign Commerce, S. 1629, Feb. 25 to March 6, 1935, pages 208-216:

"The Chairman. Of course if you wanted to leave out passenger traffic, you could merely amend it by saying transportation of property by trucks.

"Mr. Wakelee. That would satisfy me and satisfy the kind of operations I speak about but it would not satisfy some other situations. While the amendment suggested by the chairman was the amendment I first intended to suggest, I have been informed there are situations with respect to the carrying of passengers where some exception might well be made. I refer particularly to Kansas City. That is a city lying on both sides of a State line, of course, two cities in name but one practically, and the rail carriers, the street railways, run indiscriminately across the State line. And they are substituting on some of those lines busses for the street railway. Those busses do an intrastate business in both cities. They are regulated

Neither the proponents of this amendment nor Congress contemplated the application of the proposed condition in connection with purely intra-terminal operations, even though such operations cross a state line and that is shown by the legislative history.

Consideration was given to entirely eliminating bus transportation from the general exemption under Section 203 (b) (8). Had that been done, it would have accomplished the same results reached by the Commission through literal interpretation of the intrastate condition and resulted in no exemption for two of Appellees. But the proposal to eliminate bus transportation from the general exemption provided by Section 203 (b) (8), was laid aside because it was not intended or desired to reach purely local or intra-terminal transportation. This purpose and objective was made clear by the illustrations presented to the Senate Committee. It was not the intention to remove or qualify the exemption for such local transportation as might flow across a state line, between such points as Kansas City, Missouri, and Kansas City, Kansas. That was local transportation which was not to be affected by the proposed amendment. The purposes of the exemption as finally provided in Section 203 (b) (8) were explained to the Senate by Senator Wheeler.

> "An exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between contiguous municipalities or commercial zones, as between New York City and New Jersey, and also for instance, as between *Washington, and Alexandria*, and other contignous cities *where the transportation is regulated by*

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by both States. They are in an entirely different position from where an operator does a purely interstate business which cannot be regulated by a State. Therefore the amendment I am going to present to you will exclude such operations from the bill, in metropolitan areas as well as the transportation of property". (Page 212)

the local Governments themselves." (Emphasis ours) 79 Cong. Rec. 5650.

"Provision is also made that regulation shall not apply to what may be termed 'intramunicipal' or 'occasional' operations 'unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202'. The first of these two conditional exemptions concerns the transportation of passengers or property in interstate or foreign commerce within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is part of a continuous carriage or shipment to or from a point without such local area. The Committee has added an outright exemption of the operations of carriers of passengers in such local areas where such carriers of passengers are also lawfully engaged in the intrastate transportation of passengers over the entire length of their interstate route or routes in accordance with the laws of each State having jurisdiction.

"At the present time some are regulated by each State. For instance, as between New York and Jersey City, if they are regulated by the State of New York and by the State of New Jersey, then they are exempt from the provisions of the bill. *But if there is no regulation of their operations in either State*, then the Commission would have the right to regulate them.

"*The purpose of this exemption is to avoid duplication of regulation over bus operations*, such as those conducted by street railways, however, the Commission is authorized to take jurisdiction, where necessary, over buses operated within a municipality or between contiguous municipalities by motor carriers in interstate service *and not so regulated by the States. The absence of such regulation has in some instances created chaotic conditions beyond the control of any State or municipal body.*" (Emphasis ours) 79 Cong. Rec. 5651.

The Commission is without jurisdiction over the intraterminal transportation here involved for the reason that

such transportation is not within the general policy of Congress in such matters.

Whatever may have been the fears with respect to unregulated transportation, in extensive undefined commercial zones, such issues were settled by the Commission when it prescribed a very restricted commercial zone for Washington, D. C. The Commission cannot be so inconsistent as to leave outstanding its order in *Washington, D. C. Commercial Zone*, 3 M. C. C. 243, and then ignore it and issue contrary orders in this case, without notice to the parties that the commercial zone area was to be re-examined.

(b) *The Commission Cannot, Under the Facts in This Case Acquire Jurisdiction Over Intra-terminal Transportation as Such by Reference to the National Transportation Policy.*

The Commission appears to rely for jurisdiction on the general provisions of the declaration of policy.[13] The declaration of policy is referred to in Section 203 (b) (7a) and is a general standard for the guidance of the Commission in the administration of the specific provisions of the Act, and nothing more. *McLean Trucking Co. v. U. S.*, 321 U. S. 67,

[13] "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of the Act shall be administered and enforced with a view to carrying out the above declaration of policy." (Act Sept. 18, 1940, c. 722, title 1, sec. 1; 54 Stat. 899.)

82. Among other matters the declaration of policy refers to "national defense". For the reason that the government installations on the Virginia side of the Potomac River are Army and Navy establishments and related to the war effort, the Commission concludes that it may rely on the declaration of policy and take jurisdiction over purely local intra-terminal transportation. Appellees meet this issue squarely and contend that there is nothing in the declaration of policy or in any section of the Act, which confers jurisdiction over purely local intra-terminal transportation under any circumstances whatever. The Commission has no primary jurisdiction over anything that is local anywhere, and its secondary jurisdiction over local matters is strictly ancillary and for the sole purpose of implementing its primary jurisdiction over subjects committed to it by Congress.

Every purpose and part of the Interstate Commerce Act deals with national transportation as distinguished from local affairs. The declaration of policy is nothing more than a guide or standard for the administration of the provisions of the Act having to do with *national* transportation. The declaration of policy is not an omnibus for the unrestricted enlargement of powers and jurisdiction whereby the Commission may invade without other guides or standards the domain of purely local affairs.

There are many provisions in Part I dealing with railroads and express companies, and Part II dealing with motor carriers, which confer jurisdiction on the Commission over national carriers and with respect to many local activities of such carriers. However, this jurisdiction, regardless of whether if be primary or secondary, is without exception related to national transportation matters, committed to the Commission's jurisdiction, but that jurisdiction may only be exercised in connection with national carriers. Separate and independent jurisdiction over local matters can never be exercised by the Commission solely in connection with local carriers.

Unquestionably the Commission has jurisdiction over many local activities, which are directly related to transportation in its national sense. The Commission has secondary jurisdiction over the activities of national carriers with respect to their local activities. Secondary jurisdiction may be exercised almost without limit for the purpose of preventing any national carrier from discriminating against or granting preferences to any shipper or for the purpose of preventing indirect rebates, by any means whatever. It may well be that the reference to "national defense" in the declaration of policy may call for the exercise of broad jurisdiction over national carriers. Broad jurisdiction when related to some specific provision of the Act may reach local segments of the national activities of national carriers. But the reference to "national defense" in the declaration of policy can never confer any jurisdiction on the Commission over any intra-terminal transportation or any other activity which is not connected with transportation to, from or beyond the local area.

None of the Appellees here is owned or controlled by any national carrier performing transportation beyond the local area. None of the activities of any of the Appellees affects any transportation beyond the local area. Therefore the Commission is without any jurisdiction whatever to lay hands on the local transportation here involved.

The war effort has necessitated much special legislation, including the appropriations of plants and the drafting of men. And, if necessary for the war effort, Congress might control or operate all the local transportation in the United States. But that is a matter which concerns Congress and not the Commission. Congress has not delegated to the Commission jurisdiction to determine whether a purely local activity either aids or hinders the war effort and thereupon to assume and assert jurisdiction over purely local affairs.

The extent of the all-inclusive jurisdiction and powers which the Commission would assert by merely referring to

"commerce", "postal service" and "national defense", in the declaration of policy, is illustrated by their assertion of jurisdiction over purely local transportation in this case.

The Commission demands that a street railway, over which they have no jurisdiction under any circumstance, must make joint rates and sell commutation tickets in connection with a number of independent bus lines. Based on the same shadow of asserted jurisdiction they could, with equal lack of justification, require through routes, joint rates and commutation fares between the same street railway and the same bus lines, on the one hand, and all of the interstate railroads entering the District of Columbia. Such action would hardly be approved by this Court upon the bare assertion by the Commission, that there might be some relationship between such arrangements and the war effort.

A declaration of policy standing alone does not serve to confer jurisdiction.[14] The words "national defense" appearing in the declaration of policy stand alone, insofar as purely local affairs are concerned.

In a certain proceeding the Commission established the commercial zone of Washington, D. C.[15] which was intended to and did have the effect of defining the zone of local affairs which were exempt from regulation under Section 203 (b) (8) of the Interstate Commerce Act. Somewhat comprehensive discussions of the Congressional intent and the basis for commercial zone exemptions are found in several reports by the Commission and in decisions by the Courts.[16]

Appellee, Arlington & Fairfax Motor Transportation Company, operates wholly within the commercial zone of Washington, D. C., as defined by the Commission (R. p. 860). The other Appellees conduct some operations which

[14] Mississippi Valley Barge L. v. U. S., 292 U. S. 282.

[15] Commercial Zone—Washington, D. C., 3 M. C. C. 245.

[16] Noedling Trucking Company v. U. S., 29 Fed. Supp. 537.
Palisano—Application—30 M. C. C. 591
New York Commercial Zone, 1 M. C. C. 665, 2 M. C. C. 191.

extend slightly beyond the commercial zone (Ex. 91; R. p. 1030). However, none of those routes or operations is involved in these proceedings (R. p. 843).

The Commission has established the limits of commercial zones which it would recognize in a number of cities.[17] Certain administrative rulings have been issued which define the distance beyond the corporate limits, which a motor carrier may operate without affecting the national transportation policy and without further authority from the Commission.[18] It appears to have been the object of the Commission, in fixing commercial zones, to so restrict the areas as to eliminate the exemptions under Section 203 (b) (8) from anything resembling line-haul transportation, such as was feared by the New Jersey bus operators when the original Motor Carrier Act was being considered by the committee.

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[17] Washington, D. C. Commercial Zone, 3 M. C. C. 243
New York, N. Y. Commercial Zone, 1 M. C. C. 665, 2 M. C. C. 191
St. Louis, Mo.—East St. Louis, Ill., Commercial Zone, 1 M. C. C. 656, 2 M. C. C. 285
Chicago, Ill. Commercial Zone, 1 M. C. C. 673
Cincinnati, Ohio, Commercial Zone, 26 M. C. C. 49
Los Angeles, Calif., Commercial Zone, 3 M. C. C. 248
Philadelphia, Pa., Commercial Zone, 17 M. C. C. 533.

[18] Administrative Ruling No. 87, issued April 23, 1940—

"The Bureau considers the intent of the Commission in issuing operating authority to such carriers to contemplate the service of shippers whose business establishments are in fact an integral part of the business communities near which they are located, if they do not lie within a separately incorporated borough, city, town (other than the New England type), or village, not specifically authorized to be served. In order that there may be definite and uniform administration under the foregoing interpretation, regular route common carriers by motor vehicle authorized to serve a given point, may serve all places which lie wholly within one quarter mile of the incorporated limits of said point, if the population thereof is 2500 or less; within one-half mile, if the population is between 2500 and 10,000; within one mile if the population is between 10,000 and 100,000; and within two miles if the population exceeds 100,000, all such populations to be determined according to the latest report of the United States Census Bureau."

The areas which the Commission has recognized as commercial zones bear substantial resemblance to the Kansas City, Missouri-Kansas City, Kansas, illustration which was brought to the attention of the Senate Committee. It is to be observed that the transportation here involved is not only entirely within the commercial zone of Washington, as defined by the Commission, but does not even approach the outer limits of that zone in any direction (R. p. 843).

Before the Commission could remove the exemption under Section 203 (b) (8) and under its determination of the Washington, D. C. Commercial Zone, it was bound to make certain findings. The only legal findings which the Commission could make, so as to lift the exemption, would be findings that the transportation involved affected interstate commerce in the national sense. By such interstate commerce we mean commerce originating or terminating beyond the limits of the commercial zone and not merely local interstate commerce within the commercial zone. The Commission made no such findings and, of course, under the facts in this case, it could not possibly do so.

The report and order of the Commission in and of itself negatives any contention that the Commission was, or thought it was, dealing with a subject which affected that interstate commerce which Congress committed to its jurisdiction.

> "From 12th and F Streets, N. W., in the heart of the business district and within two or three city blocks of the terminals of all of the Virginia Lines, the distances over the Highway Bridge are about 3.7 miles to the Pentagon, 4.9 miles to the Navy Annex, 4 miles to the Army Annex, and slightly farther to the Airport. Over the Memorial Bridge the distances are somewhat more than a mile longer." (R. p. 819).
>
> "This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. That part of the

> transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. In the case of the former, the movement is in vehicles loaded to utmost vehicle capacity and for relatively short distances, while the latter is characterized by longer hauls and less utilization of vehicle capacity although, under present conditions, practically all urban and suburban bus lines are heavily loaded during rush hours. It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington" (R., p. 849).

The Commission regarded the transportation as being so local that it required the Capital Transit Company to perform the additional service to the Pentagon Building at no addition to its District of Columbia intrastate fare. The Commission also required the Washington, Virginia and Maryland Coach Company to perform the entire service within both Virginia and the District of Columbia, at substantially less than its local intrastate Virginia fares, for the Virginia portion of the route. The Commission ordered a reduction from 10¢ to 8⅓¢ or a 17 per cent reduction in the intrastate fares (R., p. 814).

The Commission discusses a number of questions arising under Section 203(b)(8) as possibly lending some color to jurisdiction. However, a careful analysis of the Commission's report indicates that jurisdiction was really based on the general terms of the declaration of policy and including particularly "national defense".

After its discussion of Section 203(b)(8) the Commission said (R., p. 843):

> "In any event, we are of the opinion and find that application of the act to that transportation is, in the language of Section 203(b)(7a), necessary to carry out the national transportation policy. We conclude that we have general jurisdiction over all of the fares under consideration."

The only purpose and function of the declaration of policy is to guide the Commission in the administration of specific provisions of the Act and does not in and of itself confer any additional jurisdiction. The Commission has made no findings of fact which establish either primary or secondary jurisdiction under any provision of the Interstate Commerce Act. The Commission has failed to comprehend that a conditional exemption also connotes conditional jurisdiction. The Commission has failed to make the essential findings to support conditional jurisdiction, and under the facts of this case no such finding could have been made.

Apparently the Commission has undertaken to extend its jurisdiction under something akin to war powers. When Congress desired to clothe the Commission with war powers it has done so by specific legislation, covering specific subjects and generally providing an expiration date. In connection with the transportation here involved, Congress has not conferred on the Commission any war powers and it is significant that the Commission's orders provide no expiration date and are therefore permanent orders.

Here the Commission has reversed the usual procedure. Finding limitations on its jurisdiction by reason of Section 216(e) and being unable to touch intrastate rates, it adopts the novel course of requiring an extension of the territory and including interstate territory, which must be served at the local intrastate rates.

The Commission's conclusion that its jurisdiction is necessary to carry out the national transportation policy is predicated chiefly upon its finding that employees' dissatisfaction with the fares impeded the war effort (R., p. 944). The District Court held, and we show later in this Brief, that there is no evidence to support this finding (R., p. 944).

The United States says (Br., p. 12) that unless the Commission has jurisdiction these rates would not be regulated. That question is comprehensively argued in the brief of the Virginia State Corporation Commission, and the argument is not repeated here.

(c) *The Commission cannot extend an interstate operation beyond the termini fixed under statutory requirement.*

The interstate operations of Capital Transit Company involved in this proceeding were initiated by application of that company to the Interstate Commerce Commission for temporary authority covering routes from the Pentagon Building in Virginia over certain designated roads in Virginia and such streets in Washington, D. C. as might be designated by the local authorities in the District of Columbia. Section 40-603 (e) of the D. C. Code, 1940 Edition, provides that interstate carriers entering the District of Columbia shall operate only over such routes in the District of Columbia as may be fixed by a Joint Board consisting of the Public Utilities Commission and the District of Columbia Commissioners. Sections 207 (a) and 208 (a) of the Motor Carrier Act 1935 provide that no certificate shall be issued by the Interstate Commerce Commission for operations other than between fixed termini and that such certificate shall specify the fixed termini between which the carrier is authorized to operate. Act of August 9, 1935, c. 498; 49 Stat. 551, 552; 49 U. S. C. A. 307 (a), 308 (a).

Pursuant to such local designation of routes, the company fixed a tariff at 5 cents for the interstate trip from 23d Street and Constitution Avenue, Washington, D. C. to the Pentagon Building in Arlington County, Virginia and similarly in reverse. When it became desirable to extend the route and fix a new terminus at 19th and C Streets, as approved by the local authorities, the Interstate Commerce Commission, upon application of the company, approved a new tariff at the same 5-cent rate to and from the newly designated terminus at 19th and C Streets. Similar designation of route and terminus by the local authorities was made for the route via the Highway Bridge and a tariff fixed, showing by an accompanying m[illegible] the interstate route to which the tariff applied and the fixed terminus thereof at 7th Street and Constitution Avenue.

The Commission, by its orders in this case, has undertaken to extend the limits of the interstate routes to include *all points* in the District of Columbia reached by the local street railway and bus lines of Capital Transit Company. In so doing the Commission has ordered interstate transportation over non-designated routes and not between fixed termini, all in violation of Sections 207 (a) and 208 (a) of the Motor Carrier Act and Section 40-603 (e) of the District Code.

II.

The Order Violates Section 216(e) of the Motor Carrier Act.

Section 216 (e) of the Motor Carrier Act (49 U. S. C. A. Sec. 316 (e) contains this *proviso:*

> "Provided, however, That nothing in this part (the Motor Carrier Act is Part II of the Interstate Commerce Act) shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

The Commission is thus categorically denied authority to prescribe or regulate for any purpose whatever any fare for intrastate transportation or any service connected with intrastate transportation.

The basic and chief service connected with a transportation fare is the furnishing of a ride. Thus, when a person in the District of Columbia buys a Capital Transit token, the principal service which he has thereby purchased is a right to ride on a Capital Transit bus or street car. The most important feature of this right to ride is *Where*. When the Public Utilities Commission of the District of Columbia orders that a token shall be good for a ride anywhere within the District, it is prescribing and regulating a most important service connected with that fare. It is clear that the prescription or regulation of the ride for

which a transportation fare is good is the prescription or regulation of a service connected with that fare.

Fares for rides within the District of Columbia on Capital Transit facilities are prescribed by the Public Utilities Commission of the District of Columbia (R., p. 846). The Interstate Commerce Commission, by the order at bar in this case, attempts to extend into Virginia the service for which these fares were and are prescribed. It orders that Capital Transit Company shall make no additional charge for the trip beyond the District, and shall give a transfer from its District lines to the Virginia companies' lines (R. p. 814).

In the language of the able counsel for the United States, speaking to the District Court:

> "All that the Commission's order does here is to extend the District of Columbia rate base and the District of Columbia fares of the Capital Transit Company both cash and token to cover this Virginia transportation."

The Commission and the War and Navy Departments, by counsel, concurred in the statement of counsel for the United States. Indeed, the order of the Commission makes clear that its basic theory is that the Virginia installations should be treated, for transportation purposes, as part of the District (R., pp. 847, 849, 850. Appellants so state here (I. C. C. Br., pp. 9, 11; U. S. Br., p. 39).

When the Commission thus extends District of Columbia fares to cover this Virginia transportation, it is prescribing a service connected with those fares. The statute certainly means that the Commission cannot prescribe the ride for which an intrastate fare shall be good.

The fact of the matter is that the prescription of the trip for which a fare is good, is a regulation of the fare itself. Fares are not fixed *in vacua*. Fares are fixed for some specified trip. We do not say "The fare on the B. & O. is $1.50." We say "The fare on the B. & O. from Washington to Baltimore is $1.50." When a Commission fixes a fare,

it fixes a charge for a given trip. So when the Commission in this case says that a District fare shall be good for a ride to points in Virginia, it is clearly to that extent "regulating" the District fare. It seems absurd to us to say that the prescription of the trip for which a fare is good is not a regulation of the fare or a regulation of the service to be rendered for that fare.

The principle here involved is vastly broader and more important than this case. Suppose the City of New York has a local fare of 5 cents. Could the Interstate Commerce Commission say: "We order you to expand your local service to include Newark and Hoboken in New Jersey"? Or suppose the State of Iowa fixed an intrastate fare for city service in Des Moines at 10 cents. Could the Interstate Commerce Commission say: "By order we hereby expand the City of Des Moines for transportation purposes to include the City of Omaha, Nebraska, and order the Des Moines Company to include Omaha in its local service"? Would anybody contend that the Commission was not prescribing or regulating a service connected with intrastate transportation?

Congress, by the *proviso* in Section 216(e), meant that the Commission should have no authority over intrastate service or fares for any purpose whatever. It said precisely that. And the order of the Commission in this case is a direct violation of the Section.

This order is the first of its kind ever issued by the Commission. It comes to this Court with a strong protest from members of the Commission (R., pp. 853-856). The majority of the Commission is testing out an enlargement of its powers. Knowing that it cannot directly prescribe an intrastate fare, it seeks to accomplish a vast enlargement of its powers by a slightly less direct method. It finds that it may take an established local intrastate fare and by an order expand the territory to which that local fare shall apply. This latter is just as clear and just as direct a violation of the statute as would be an order attempting to fix the amount of the local fare.

III.

The Commission Exceeded Its Statutory Authority in Prescribing Joint Fares Between the Virginia Bus Companies and the Capital Transit Company.

This point concerns the statutory authority of the Commission to prescribe joint fares between motor common carriers of passengers who operate between points in Virginia and certain designated points in the District of Columbia over specified routes, and the Capital Transit Company, which is engaged in mass transportation partly by bus but principally by street electric railway cars in the District of Columbia. It is settled that under the common law and in the absence of statute a common carrier is free to establish or to refuse to establish joint through tariff rates with other carriers, and in the absence of statute such carriers may not be compelled to establish joint fares or arrangements for through carriage. *Southern P. Co.* v. *I. C. C.*, 200 U. S. 536; *Atchison T. & S. F.* v. *Denver and N. O. R. Co.*, 110 U. S. 667; *Louisville & N. R. Co.* v. *West Coast Naval Stores Co.*, 198 U. S. 483. It is likewise settled that the authority to prescribe rates is too vast in its effect and scope ever to be conferred by implication, but must be affirmatively granted. *I. C. C.* v. *C. N. O. & T. P. Ry. Co.*, 167 U. S. 479. Consideration of the principles of these decisions is necessary to a proper understanding of the authority which the Commission purported to exercise in this case.

The pertinent parts of section 216 (e) of the Interstate Commerce act (49 U. S. C. A. Sec. 316 (e)) are set forth in the footnote below.[19]

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[19] "* * * Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle * * * in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, * * * is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or

By its reports and orders in the pending case the Commission required that the Virginia bus companies establish joint fares with the Capital Transit Company for application to passengers between the federal installations in Virginia and all points in the District of Columbia served by the Capital Transit Company, including the street electric railway operations of the Capital which constitute about 63 per cent of its total business (R., p. 842). In this requirement the Commission erred in two important respects:

First, it assumed, without evidence to support the assumption, that through routes between the Virginia bus companies and the Capital Transit Company now exist (R., p. 850).

Second, it assumed that its authority to prescribe joint fares and through routes between motor common carriers of passengers, conferred by section 216 (e) of the Interstate Commerce Act, includes a local mass transportation carrier such as the Capital Transit Company, and that section 216 (e) includes the right to require the establishment of joint fares and through routes between the Virginia companies, which are motor common carriers of passengers, good for use on the street electric railway operations of the Capital Transit Company (R., p. 850).

As to the first point: The Commission said that "through routes are now in effect, and we find that joint fares on this traffic interchanged between the Transit Company and the Virginia lines are necessary and desirable in the public interest" (R., p. 850). There is not a scintilla of evidence in the record which shows that through routes or arrange-

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unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge * * * thereafter to be observed, * * * and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of *passengers by common carriers by motor vehicle*, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated." (Italics added.)

ments for through carriage now exist between the Virginia bus lines and the Capital Transit Company with respect to passengers moving between the federal installations in Virginia and points in the District of Columbia. The fact that a passenger quits a bus of the Virginia lines and boards a street car or bus of the Capital Transit, or vice versa, does not establish the existence of a through route or an arrangement for through carriage. The passenger can not purchase a ticket from the Virginia lines which will be honored by the Capital Transit Company, nor can he purchase a ticket from the latter which will be honored by the Virginia lines. Each passenger traveling between Virginia and the District of Columbia purchases a ticket from the carrier he uses, which is good only for the service performed by that carrier (R., p. 839). There is no arrangement between the Capital Transit Company and the Virginia bus lines for the through carriage of passengers between the points involved. In fact there is no coordination of services as between the Appellees, no common terminals and no arrangements for the interchange of passengers. Each passenger boards or alights from a vehicle of Appellees at any point where the vehicle stops that suits his convenience.

It has long been settled that a through route is an arrangement, express or implied, between connecting carriers for the continuous carriage of goods or passengers from a point on the line of one carrier to a point on the line of another. An essential and indispensable element to the existence of a through route is the right of the passenger or shipper to contract for through carriage. *Alleged Unlawful Rates and Practices*, 7 I. C. C. 240; *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136; *United States* v. *Munson S. S. Co.*, 283 U. S. 43; *The Ogden Gateway Case*, 35 I. C. C. 131; *Virginia Stage Lines—Southern Passenger*, 15 M. C. C. 519.

In the *Munson Case, supra*, the court held that mere continuity of movement is not enough to establish a through route or an arrangement for through carriage. In the *Vir-*

ginia Stage Lines Case, supra, one of the questions was whether passengers which were transported between points in Virginia by an intrastate bus company under a local ticket sold to the passenger by that company, where the passenger used another bus line under a separate ticket to points outside the State of Virginia, constituted the engaging in interstate commerce by the first carrier, which would make it subject to the provisions of Part II of the Interstate Commerce Act. The Commission held that the carrier was not engaged in interstate commerce. In doing so it cited the decision of this court in *New York Central* v. *Mohney*, 252 U. S. 152, and its own decision in *Red Star Lines Case*, 3 M. C. C. 313. In these cases the Court and the Commission recognized that there is an essential difference between freight traffic, which must be identified and billed, and passenger traffic in that the passenger is in position at all times to control his own movements. If the fact that in the instant case certain passengers who move from the federal installations in Virginia via the Virginia bus lines to their terminals in the District of Columbia elect to use the Capital Transit Company to continue their journey to points within the District of Columbia constitutes a through route or an arrangement for through carriage, it would follow from this premise that the Appellees have through routes with all of the railroads and other bus lines which operate between the District of Columbia and various points in the United States. The reach and consequence of this view repel its acceptance.

As to the second point: The Capital Transit Company is a local carrier engaged in mass transportation, principally in the District of Columbia, partly by motor bus and partly by street electric railway cars. Approximately 63 per cent of its business is handled in electric railway cars (R., p. 842). There is no evidence in the record which shows that the bus and the street car operations of the Capital Transit Company are so co-mingled as to be inseparable. The record is silent on this question.

Part II of the Interstate Commerce Act is commonly referred to as the Motor Carrier Act. Many of its provisions are similar to the provisions of Part I and Part III, but there are essential differences. For example, section 1 (4) of Part I makes it the duty of common carriers by railroad to establish reasonable through routes and joint rates as to freight and passenger traffic with each other and with common carriers by water subject to Part III. By section 15 (3) the Commission is given authority to compel obedience to that duty. Section 305 (b) of Part III makes it the duty of common carriers by water to establish through routes with each other and with railroads with respect to both freight and passenger traffic. By section 307 (d) the Commission is given authority to compel obedience to that duty. Under the provisions of Part II motor common carriers of property are not required to establish either joint rates or through routes.

Section 216 (a) does impose upon "every common carrier of passengers by motor vehicle the duty to establish reasonable through routes with other *such* common carriers * * * and * * * to establish, observe and enforce just and reasonable individual and joint rates, fares, etc. * * * and just and reasonable regulations and practices relating thereto, etc. * * * and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce * * *." In Section 216 (e), above quoted, authority is conferred upon the Commission under the conditions described therein to enforce obedience to that duty in an appropriate proceeding.

It will thus be seen that the duty of a motor common carrier to establish joint rates and through routes is limited to joint rates and through routes between motor common carriers of passengers and that the authority of the Commission to compel obedience to that duty is likewise limited. It is clear that a local carrier like the Capital Transit Company, which is engaged in local mass transportation, is not embraced within the expression "with other such common

carriers'' as used in section 216 (a) even as to its bus transportation. The rational view is that the quoted phrase means motor common carriers of passengers which are engaged in substantially similar transportation services.

The Commission, in its report, and counsel for Appellants, in their brief, make a labored and unconvincing effort to find some justification for that part of the Commission's order which requires the Appellees to establish joint fares for application to passengers moving between the federal installations in Virginia and points served by the electric street railway operations of the Capital Transit Company in the District of Columbia. In fact, it is difficult to understand the reasoning made in this respect. In the *Omaha and Council Bluffs case*, 230 U. S. 324, this Court held that a street electric railroad engaged in interstate commerce is not subject to the Interstate Commerce Act because not comprehended within the meaning of the word "railroad" as used in section 1 of that act. To circumvent that decision, the Commission arbitrarily stated that the Capital Transit Company is not now, although it may have been in the past, a street electric passenger railway in the usual sense of that term. This statement was made despite the fact that over 63 per cent of the passenger business of the Capital Transit Company is handled on its street electric cars (R., p. 842).

The precise ground on which the Commission predicates its exercise of authority to prescribe joint fares under section 216 (a) is far from clear. It appears, however, that the Commission seeks to justify its action on two grounds: (a) that the bus and the street car operations of the Capital Transit Company are so co-mingled as to be inseparable (R., p. 842) and therefore the Commission may treat the entire operations of the Capital as constituting the operations of a motor common carrier of passengers, and (b) that as the authority of the Commission to prescribe joint fares and through routes in section 15 (3) and section 307 (d) excludes electric railways from the exercise of this authority,

and, as section 216 (e) does not contain similar excluding language, there is an implied authority in that section to prescribe joint fares for application between the Virginia bus lines and the electric street railway operations of the Capital Transit Company (R., p. 841).

We shall deal with these grounds in the order in which they are stated. There is absolutely no evidence in the record to show that the bus and the street electric railway operations of the Capital are so co-mingled as to be inseparable. The record is silent on this point, but in the nature of things it is clear that the operations of the buses and of the street electric railway cars are separable. There is no substance to the grounds relied on in clause (a). In dealing with this phase of the case the Commission said that it is analogous to the relation between intrastate and interstate railroad traffic and rates as to which, in the *Wisconsin Passenger Fares Case*, 257 U. S. 563, 588, this Court said that the effective control of the one class of traffic must embrace some control over the other in view of the blending of both in actual operation. Aside from the fact that the two situations are not analogous, it is worth mentioning that the statement made by Chief Justice Taft in the *Wisconsin case* was largely *obiter dictum* since his opinion clearly reveals that the Court was not called upon to base, and did not base, its decision in that case on the blending of the intrastate and interstate traffic.

The Chief Justice went out of his way to say that the Interstate Commerce Commission has no authority by section 13 (4) to regulate intrastate fares as such, but that the authority there conferred could not be exercised without the incidental regulation of intrastate commerce. That section confers upon the Commission the specific statutory authority to remove unjust discrimination and burdens against interstate commerce, and against persons and localities by requiring the railroads to give like treatment in respect to fares applicable to intrastate commerce and interstate commerce. In the *Wisconsin case* the Court dealt

with the incidental effects on intrastate commerce of the exercise by the Commission of an authority specifically conferred by statute to prevent unjust discrimination against interstate commerce. Here the Commission has seized upon the so-called co-mingling doctrine to justify the exercise of an authority that does not exist. Before the co-mingling doctrine has any application in any case, there must first exist statutory authority to act on the subject matter. The *Wisconsin case* and other similar cases which have referred to that doctrine merely hold that where statutory authority exists under the commerce clause and the subject matter is co-mingled and blended in such a manner as to be inseparable, the federal authority may be exercised even though it has an incidental effect upon a subject not otherwise within the control of the federal authority. Moreover, in the light of the scope of the authority of this Commission under section 3 and section 13 (4) of the Interstate Commerce Act, it is clear that the so-called co-mingling or blending of traffic referred to in the *Wisconsin case* was relevant and material principally because it tended to show similarity of transportation conditions. That in turn would remove any justification that might otherwise exist for the maintenance of intrastate fares relatively lower than the corresponding interstate fares for similar services.

It is clear that the statement from the *Wisconsin case*, relied on by the Commission as to co-mingling, affords no justification for the authority exercised by the Commission in the instant case. It is equally clear that if the facts otherwise justified the action by the Commission, and they do not, it could only prescribe joint fares between the Virginia bus lines for application on the bus lines of the Capital Transit Company.

In its discussion of this question, the Commission referred to the decision of this Court in *United States* v. *Village of Hubbard*, 266 U. S. 474. In that case the Court pointed out the historical distinction under the Interstate Commerce Act between the absence of authority in the Commission

over the rates of street electric railways and the presence of its authority over the rates and routes of interurban electric railways. The decision of the Commission implies, without affirmatively so finding, that the Capital Transit Company may also be treated as an interurban electric railway (R., p. 841). The Commission itself has always treated that company and its predecessor as a street electric railway not subject to its jurisdiction. See *Depreciation Charges of W. R. Y. & E. Co.*, 85 I. C. C. 126. However, as the record affirmatively establishes that no arrangement for through carriage or through routes exists as between the Capital Transit Company and the Virginia bus lines, and as these carriers have not established any individual or joint through charges in conjunction with each other such as are authorized by section 216 (c) and such as are recognized by section 216 (e), it is wholly immaterial whether the Transit Company be treated as a street electric railway or as an interurban electric railway. The Commission has no authority, either under Part I or Part II of the Act, to prescribe joint fares between interurban electric railways or any other railroad and common carriers of passengers by motor vehicle.

The authority to prescribe joint rates and through routes is an extraordinary exercise of power. It is too vast in its effect and scope ever to be conferred by implication. *Interstate Commerce Commission* v. *C. N. O. & T. P.*, 167 U. S. 479. In enacting Part II of the Interstate Commerce Act, Congress was careful to restrict that authority specifically conferred in section 216 (e) to joint rates and through routes between motor common carriers of passengers. The Commission is a creature of statute. It has no inherent authority. The provisions of that act are its chart and compass. To say that an extraordinary authority such as the prescription of joint fares and through routes may be granted in a statute merely because it is not specifically prohibited is a vicious doctrine which should not be sanctioned by this Court. *Expressio unius est exclusio alterius.*

A comparison of the language of section 216 (a), section 216 (c) and section 216 (e) clearly reveals that as to joint rates and through routes the authority of the Commission is limited to joint rates and through routes between motor common carriers of passengers. As we have shown, paragraph (a) of that section imposes the duty upon motor common carriers of passengers to establish reasonable through routes and reasonable individual and joint fares with respect to transportation via such routes. Section 216 (c) provides that motor common carriers of property and passengers *may* establish reasonable through routes and joint rates, etc., with other such carriers or with common carriers by railroad, express or water and that when such through routes and joint rates are established it shall be the duty of the carriers, parties thereto, to establish just and reasonable regulations in connection therewith and just, reasonable and equitable divisions of the joint rates.

Section 216 (e) provides that in an appropriate proceeding the Commission may determine whether an individual or joint rate established by motor common carriers "in conjunction with" any common carrier by railroad, express or water is unreasonable, unjustly discriminatory or unduly prejudicial. If it finds in such a proceeding that such rates voluntarily established, as contemplated by section 216 (c), violate any of these prohibitions, the Commission is given authority to prescribe the lawful rate, fare or charge to be thereafter observed. It will be noted, however, that this authority exists only when motor common carriers, railroads, express companies or water carriers voluntarily establish joint rates and through routes "in conjunction with" each other as authorized by section 216 (c). No such through routes, rates or practices have been established by the Appellees in conjunction with each other or with railroads, etc.

In the instant case the Commission has attempted to initiate joint fares and has erroneously assumed that through routes have been established between the Appellees in re-

spect to the traffic involved. Under the provisions of section 216 (e), as we have repeatedly stated, the authority of the Commission to initiate joint fares and through routes is limited by the terms of section 216 (e) to joint fares and through routes between motor common carriers of passengers. It is a well recognized principle that common carriers, like others, may do many things on their own initiative which they may not be compelled to do. The provisions of section 216 (e) and the limitation on the authority of the Commission in section 216 (e) are a statutory recognition of that principle.

For the reasons stated, it is clear that there is no factual or other basis in the record for the finding by the Commission that through routes exist between the Virginia bus lines and the Capital Transit Company for the transportation of passengers between the federal installations in Virginia and points in the District of Columbia; that the Commission has no authority to prescribe joint fares and through routes between motor common carriers of passengers and the Capital Transit Company, which is engaged in local mass transportation, partly by bus and partly by street electric railway; and that the Commission erred in assuming that the omission of certain restrictive language in section 216 (e) as to electric railroads, which is contained in sections 15 (3) and 307 (d), confers the authority exercised by implication.

IV.

The Interstate Commerce Act Does Not Authorize the Commission to Prescribe Commutation Fares or Any Special Fares.

The Interstate Commerce Act does not authorize the Commission to prescribe commutation fares or any other special fares or charges for application by motor common carriers. The standard set up by that act, section 216(d), is that such common carriers shall establish and maintain fares and charges which are just and reasonable and free

from unjust discrimination, undue prejudice or preference. The policy of the provisions of Part II, as well as the other parts of the Interstate Commerce Act, is to leave to the carriers themselves the right to determine whether commutation or special fares should be established in particular instances. This policy was cogently stated by this Court in *C. N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 197, where the Court said that subject to the two leading prohibitions that their charges shall not be unjust or unreasonable and shall not unjustly discriminate so as to give undue preference or advantage to persons or traffic similarly circumstanced, "the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."

This being so, it seems clear that the Commission exceeded its authority when it required the establishment of commutation fares. This may be illustrated by reference to the Arlington and Fairfax. The fares which the Commission directed the Arlington and Fairfax to put into effect were (R., p. 814):

1. A cash fare of 10 cents per single trip.

2. Three tokens for 25 cents, equal to 8⅓ cents per one-way trip.

3. Combination bus and bus-street car fares for multiple trips of Arlington and Fairfax and Capital Transit Company of $1.60 for twelve one-way trips, equal to 13⅓ cents per one-way trip—the latter fare permitted to be evidenced in the form of tokens or ticket book valid for 60 days or both, which tickets were to include *all* of the transfer privileges within the District of Columbia now offered by the Capital Transit.

The first two of the foregoing are fares between the Virginia installations and the terminal of the company in the District of Columbia and intermediate points, and the third is between the Virginia installations and any point in the District of Columbia.

The cash 10 cent fare per one-way trip is thus the "just and reasonable rate" which the Commission has found for the service performed. The other fares are obviously at "reduced rates". They are "commutation rates".

The Commission has defined the commutation ticket or fare as follows:

> "As applied to passenger traffic commutation seems to signify the payment of a single sum of the cost to the traveler for transportation, limited in point of time or in number of trips, between two designated points; apparently it implies also a fare per trip that is less than the normal fare for a one-way journey". *Commutation Rate Case*, 21 I. C. C. 428.

It has been defined thus:

> "*Commutation ticket.* A railroad ticket giving the holder the right to travel at a certain rate for a limited number of trips (or for an unlimited number within a certain period of time) for a less amount than would be paid in the aggregate for so many separate trips. Interstate Commerce Com'n v. Baltimore & O. R. Co. (C. C.) 43 Fed. 56." (Black's Law Dictionary, P. 230)

It will be remembered that the Arlington and Fairfax never voluntarily or otherwise established or maintained a commutation or reduced rate fare—never sold tickets for "multiple trips" (R., p. 839).

Unquestionably, where a carrier has itself *voluntarily* inaugurated and presently maintains a commutation rate and service, such rates and service may be regulated by the Commission so as to prevent discrimination, but where a carrier has not voluntarily instituted such a service and rate, the Commission is without power to compel it so to do.

The dissenting opinion of Commissioner Patterson, con-

curred in by Commissioner Miller, in the first report (R. p. 855) says:

> "As to (2), it is my opinion that the tokens or tickets which respondents will be required to sell come within the definition of 'commutation tickets' as that term is used in the Act. Section 22 of Part I, which is made applicable to motor carriers by section 217(b) of Part II, permits, but does not require, the issuance of commutation tickets. We have always found that so long as commutation fares are maintained they must be reasonable and impartially applied. We have never heretofore found that we have authority to require their establishment in the first instance. *Weber Club & Intermountain Fair Assn.* v. *O. S. L. R. Co.*, 17 I. C. C. 212, *Commutation Rate Case*, 21 I. C. C. 428. *In Re Mileage, Excursion, and Commutation Tickets*, 23 I. C. C. 95, 96; *Reduced Rates*, 1922, 68 I. C. C. 676, 729; *Passenger Fares and Surcharges*, 214 I. C. C. 174, 251.
>
> "If we have power to require establishment of the fares above referred to, we also have power to require the railroads to initiate the sale of tickets in wholesale lots for local or joint transportation at a smaller sum per ticket than a reasonable single-trip fare. We have never claimed or exercised such power. I do not think we have it".

This we submit is an accurate statement of the law.

Interstate Commerce Commission Cases.

The question of commutation tickets has been considered by the Commission on many occasions, and the rule stated by Commissioner Patterson is supported by an unbroken line of cases.

In the *Weber Club & Intermountain Fair Assn.* v. *O. S. L. R. Co.*, (1909) 17 I. C. C. 212, 216, the Commission definitely held that it had no power to require a carrier to put into effect a commutation or excursion ticket. After referring to several of the earlier cases, the Commission said:

> "The inference from these cases is that the *carrier may determine for itself* whether it will sell mileage,

commutation or excursion tickets, but that if it elects to sell them it must do so within the provision of the Act".

In the *Commutation Rate Case* (1911), 21 I. C. C. 428, at page 443, the Commission, speaking through Commissioner Harlan, said:

> "It is conceded[20] * * * that carriers may not be *compelled* under the present law to establish commutation rates. This is probably true. But having undertaken * * * the power * * * of the Commission * * * to examine into the reasonableness * * * seems to be beyond question".

In the Matter of the "*Application and Use of Mileage, Excursion, and Commutation Tickets for Through Transportation in Connection with other lawfully Established Fares*" 23 I. C. C. 95, 96 (1912) Commissioner Clements, speaking for the Commission, again stated the doctrine that:

> "Among the things which *they* (the carriers) *are permitted but not compelled* to do is to establish excursion, commutation and mileage tickets * * *".

In re Mileage Books (1913), 28 I. C. C. 318 holds that where issuance is voluntary—conditions attached thereto must not be discriminatory.

At page 323 the Commission says:

> "It appears that public regulating authorities have no power to *compel* the issuance of such mileage books".

and later in the same opinion (p. 325) this:

> "Section 22 of the act to regulate commerce provides in part: 'That nothing in this act shall prevent * * * the issuance of mileage, excursion, or commutation passenger tickets'. This language has been construed as a permission to the carriers, and not as a grant of authority to the Commission to compel the

[20] By the principal complainant.

carriers to furnish passenger transportation at less than the reasonable maximum. *Field* v. *S. Ry. Co.*, 13 I. C. C., 298; *Eschner* v. *P. R. R. Co.*, 18 I. C. C., 60; *The Commutation Rate Case*, 21 I. C. C., 428; and *In Re Mileage Excursion and Commutation Tickets*, 23 I. C. C., 95".

In "*Reduced Rates*" (1922), 68 I. C. C. 676, at page 729, the Commission again reiterated this rule:

"We have no authority *to require* carriers to establish for particular passengers or particular occasions special fares lower than regular fares".

Perhaps it might be thought that some change had occurred in the Commission's consistent statement of the rule since the time of these earlier decisions, but that is not the fact.

In *1936*, after the passage of the Motor Carrier Act, there is found a further emphatic statement of the limitation on the Commission's power in *Re Passenger Fares and Surcharges* (1936), 214 I. C. C. 174, at page 250. In an opinion of the entire Commission it is said:

"After referring to the case last above cited (2 I. C. C. 649) and to others of like import the Commission in *Weber Club & Intermountain Fair Assn.* v. *O. S. L. R. Co.*, 17 I. C. C. 212, set forth this clear statement of the law.

"The inference from these cases is that the carrier may determine for itself whether it will sell mileage, commutation or excursion tickets; but that, if it elects to sell them it must do so subject to the provisions of the Act.

"We have not receded from the position thus taken in the cases cited and are not persuaded that we should do so now."

And in *Geo. W. Bristol* v. *Central RR. of N. J.* (1936), 218 I. C. C. 654, 656, at page 656, the Commission says:

"Under §22 of the Act the granting of relatively low fares for commutation services is permitted, and,

as a general rule; the conditions relating thereto are within the discretion of the carrier so long as they do not result in unlawful discrimination, prejudice, or preference.

"This *permission* does not create an *obligation*.

"It follows that the carrier likewise has the right to withdraw the lower fare as was done in the instant proceeding."

In its first opinion and report the Commission attempts no justification for the commutation fares, although the minority opinion of Commissioner Patterson, concurred in by Commissioner Miller, emphatically disputes the power (R., p. 855). After the District Court had set aside its order, the Commission in its second report attempts to justify its power. This, it is submitted, seems to be but a halting effort to buttress an untenable position. The quotation from *Re Passenger Fares and Surcharges*, supra, that "We have not receded from the position thus taken in the cases cited and are not persuaded that we should do so now" scarcely justifies the characterization by the Commission in its second report that "which statements" (of the rule here contended for) "have been *inadvertently* repeated or paraphrased in reports in recent years" (R., p. 823).

The Commission in effect says that although it may not have possessed this power in the past, *now* it does. From what source the present power is derived, we are not informed, and this in spite of the challenge in Commissioner Patterson's opinion that "We have never claimed or exercised such power. I do not think we have it" (R., p. 855).

The Decisions of This Court.

This Court has taken perhaps an even stronger stand on the subject of reduced rates than the Commission. Certainly it has declared a constitutional invalidity as to *involuntary "reduced rates"*.

In 1891 the legislature of the State of Michigan passed an act requiring the sale of 1,000 mile tickets within the State of Michigan valid for one year. Action was brought by the carrier to test the validity of this enactment of the legislature. This Court reversed the highest court of the State of Michigan and held the statute invalid. The case is reported as *Lake Shore & Michigan Southern Ry. Co. v. Henry C. Smith*, 173 U. S. 684. Of the requirement that the carrier should be compelled to sell the mileage ticket the Court said:

> "It is a pure, bald and unmixed power of discrimination in favor of a few having occasion to travel on the road and permitting them to do so at less expense than others provided they buy a certain number of tickets at one time".

Later, in *Pennsylvania R. R. Co. v. Towers, et al.* (1917), 245 U. S. 6, this Court modified, in part, its *Lake Shore* decision to the extent of holding there might be regulation where the carrier had voluntarily established such fares, but left in force that portion of its ruling which affects the question now before the Court, namely, that there is no power *to compel* the establishment of a system of commutation rates *where none has been established*. In the *Towers* case the Public Service Commission of Maryland had put into effect an order requiring the Pennsylvania Railroad Company to sell commutation tickets at certain specified rates. *A system of commutation rates had already been voluntarily established by the Pennsylvania Railroad.* The decision in the *Towers* case was limited to a situation in which the carrier had itself *voluntarily established* a system of commutation rates and the *Lake Shore* case was only overruled to the extent that it was inconsistent with the ruling of the *Towers* case. The Court said (p. 17):

> "The views therein expressed which are inconsistent with the right of the states to fix reasonable commutation fares *when the carrier has itself established fares* for such service must be regarded as overruled by the decision in this case". (Italics ours)

In 1922 Congress passed an amendment to Section 22 of the Interstate Commerce Act by adding thereto what became paragraphs 2 and 3 of that Section. The Commission was directed to require the carriers to issue interchangeable mileage or scrip coupon tickets "at just and reasonable rates". The validity of the order which the Commission made following the passage of the statute came before the court in *United States* v. *New York Central R. Co.*, et al, (1924) 263 U. S. 603. A three-judge court had invalidated the order of the Commission, and this Court, in an opinion by Mr. Justice Holmes, upholding the three-judge court, said:

> "We are of opinion that the interpretation of the statute in the court below was right. There is no doubt that the bill owed its origin to a movement on the part of traveling salesmen and others to obtain interchangeable mileage or scrip coupon books at reduced rates. The bill that was passed originally fixed reduced rates, but it was amended to its present form undoubtedly because the prevailing opinion was that the rates should be determined in the usual way, by the usual body. The object of the traveling salesmen was defeated in so far as Congress declined to take any step beyond authorizing the issue of scrip tickets * * *. *Apart from constitutional* difficulties (*Lake Shore & M. S. R. Co.* v. *Smith*, 173 U. S. 684, 43 L. ed. 858, 19 Sup. Ct. Rep. 565), *the whole tendency of the law has been adverse to the enactment as proposed; at least, unless a clear case should be made out.* (Italics supplied)
>
> "* * * It seems to us plain that the Commission was not prepared to make its order on independent grounds apart from the deference naturally paid to the supposed wishes of Congress. But we think that it erred in reading the wishes that originated the statute as an effective term of the statute that was passed, and therefore that the present order cannot stand".

It will be seen that this Court again indicated the constitutional difficulties involved in requiring a carrier to establish mileage tickets. It is further to be noted that

the offending paragraphs (2 and 3) of Section 22 were repealed by Act of September 18, 1940.

The principle of law in the *New York Central case* and the principle of law here are the same. In that case the Commission erroneously assumed that because Congress had given the authority to prescribe mileage books or scrip coupon books, it followed that it could disregard the standards set up in the Act that such books could be prescribed only at just and reasonable rates, and proceeded to fix a rate approximately 90 per cent of the going standard fares. In the instant case, the Commission has likewise assumed that it has the authority to prescribe a lower fare as a coupon or a book than it might prescribe as a straight cash fare. In fact, the Commission approved a cash single fare in this case as reasonable, but prescribed a substantially lower fare with the requirement that Appellees issue tokens or books.

Section 22 of the Act (the Section which authorizes the issuance of mileage, excursion, or commutation passenger tickets) provides that:

> "Nothing in this chapter shall prevent the carriage * * * free or at reduced rates for the United States, State or municipal governments * * * ".

The question of whether this Section should be construed as denying to the Commission power to prohibit such reduced rates upon certain goods for a municipal government where they resulted in unjust discrimination or in undue prejudice to interstate commerce, came on for decision in 1922 in *Nashville, St. L. & C. R. Co.* v. *Tennessee*, 262 U. S. 318. The Court in an opinion by Mr. Justice Brandeis upheld the Commission's power. The opinion emphasizes the permissive nature of the matters set up in Section 22 and calls attention (footnote 4, page 324) to the Interstate Commerce Commission cases as ordinarily not conferring upon the Commission power to establish such exceptions to the normal rates and fares.

Not only is the principle asserted thoroughly established by authority, but it is in harmony with the spirit and purpose of the Interstate Commerce Act. As this Court said in *Northern Pacific RR v. North Dakota Ex Rel McCue*, 236 U. S. 585, at page 595:

> "But, broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, * * *. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection, and seek to impose upon the carrier and its property burdens that are not incident to its engagement. * * *"

It is true that the foregoing was said of a State regulatory body and not of the Interstate Commerce Commission, but the principle is identical.

V.

The Order Establishes an Unreasonable Differential in Rates as Between the Carriers.

If an 8⅓ or 10 cent fare for a given service is considered by the Commission a reasonable fare for one carrier and no fare at all is considered reasonable for the same service for another carrier, this is obviously, in the absence of compelling evidence, such an arbitrary thing that it cannot be considered reasonable.

A person going from any point in the District to the Pentagon Building goes by two buses, or by a street car and a bus. Under the order of the Commission if he goes all the way by Capital Transit he pays 8⅓ cents (R., p. 814). If

he goes by the same highways, practically the same service, but uses as his second bus one of the Virginia companies, he pays 13⅓ cents if he buys a commutation book and 18⅓ cents if he doesn't (R., p. 814). In other words, two routes are side by side, rendering the same service between the same points. The fare over one is 8⅓ cents and over the other is 13⅓ or 18⅓ cents. We submit that a more simple example of illegal preference and discrimination would be difficult to imagine.

Four of the Commissioners agreed with us on this point. Two of them, of whom one was the Commissioner who heard the case, said flatly that the order is unduly preferential. Two others said that the differing rates "lack something in reasonableness" (R., pp. 852, 854-856).

Moreover, counsel for the War Department seemed to agree with this point at the hearing. In fact it was they who argued that a difference in these rates was discriminatory. The record shows, at pages 540, 541, that counsel for the Department inquired of one of his witnesses as to whether an equalizing of the rates would not tend to lessen the load on Capital Transit buses, and in so doing he used this language—

> "Major Ristroph, it is your opinion that if the discrimination in fares was removed so that there was a uniform fare between these installations and the District that the effect of removal of such differences would be to reduce the necessity for the same number of busses to carry the peak hour traffic?"

The United States argues that the difference in the fare between the unitary Capital Transit transportation and the inter-line transportation contemplated by the Commission's order simply continues a difference which had previously existed at a somewhat higher level. This fact certainly adds nothing to the validity of the order of the Commission, which is the question before the Court. In *Lake Cargo Coal case*, 139 I. C. C. 386, 387, the Commission, speaking of the Transportation Act, said:

> "* * * * It requires that rates shall not only be reasonble per se, but just and reasonable in their relation to other rates on like traffic in the same territory that afford a proper standard of comparison * * *."

The same principle was involved in *Clarksburg-Columbus Bridge Co.* v. *Woodring*, 89 F. (2d) 788; 67 App. D. C. 44, relating to the fares of two competing toll bridges.

VI.

The Finding as to Dissatisfaction of Employees at the Virginia Installations is Without Support of Any Evidence.

Appellants assert that the transportation fares to the Virginia installations are a cause of dissatisfaction among the employees so great as to cause an extraordinary high rate of "separation" from the service and thus to impede the war effort (R., p. 850). It is clear from the opinion of the majority of the Commission that this claim was a major factor, if not the sole factor, which impelled the Commission to issue its order directing that the fares be reduced. The claim is, of course, a serious claim. We assert that not only is there no evidence to support the claim, but that the companies proved that there is no such dissatisfaction and that there is no such rate of separation. We shall show that the claim rests entirely upon an unsupported assertion by counsel for the Departments and the recitation of an opinion said to be held by the Secretaries of War and Navy, unsupported by any facts.

In his letter of June 16, 1943, to the Commission (Ex. 7; R., p. 45) which was the basis upon which this proceeding was instigated, the Secretary of War stated, "I believe * * * that the present transportation charges and conditions operate to the detriment of the efficiency and well-being of War Department personnel and against the conduct of the war effort." A compilation (Ex. 104; R., p. 1043) prepared under the supervision of Major Ristroph (R., p. 660) was

the basis for the statements made in that letter (R., p. 661). The first witness presented in the proceeding was Major General John T. Lewis, Commanding General of the Military District of Washington (R., p. 16), who stated that the additional cost of the Pentagon operation had rapidly developed into a major factor in personnel turnover at the Pentagon and at Gravelly Point, and that it is the opinion of the Secretary of War that the present fares are a detriment to the war effort, and further that at the present time transportation is the major complaint by far given by employees as a reason for severing their connections at the Pentagon Building (R., p. 23). He stated that this latter was his personal opinion and based upon information which he had received. Lieutenant Commander Randolph, Executive Officer of the Transportation Branch in the Office of the Assistant Secretary of the Navy, testified that it is the belief of the Navy Department that the existing fares are a discrimination against employees working in the Arlington Annex (R., p. 26). He explained that he had no personal knowledge of the facts and that his statement was based on exhibits which would be introduced by other witnesses (R., p. 27). When General Lewis was pressed with cross-examination, counsel for the War Department stated, "Yes, we have witnesses to bring all of this, because it is utterly pointless; he knows the position of the War Department and that is all that we have introduced" (R., p. 19). And again, "There are other witnesses to go into these detail things, and as far as our statement of policy is concerned, he is best in a position to make it, because he is more intimately acquainted with the policy questions involved here, and the negotiations between the Secretary and other people" (R., p. 21). And again, "Obviously this type of witness is not expected to testify to things of this sort" (R., p. 25). Since the witness was merely stating an opinion, and not testifying to facts, cross-examination ceased.

In his opening statement counsel for the War Department stated, "In the opinion of the Secretaries of War and Navy

the present high cost of transportation is detrimental to the war effort" (R. p. 15).

In its order of January 18, 1944, the Commission, after discussing the routes and fares and its jurisdiction, said:

> "The War and Navy Departments, hereinafter referred to as the Departments, offered considerable evidence intended to show the dissatisfaction of their employees with the fares which they are required to pay for transportation between the District and the Virginia installations; and to indicate the large turnover in personnel which is alleged to be due to such dissatisfaction. This evidence serves to show that the Departments and their employees have a real and substantial interest in the proceeding. We recognize that they have such an interest and it will not be necessary to discuss the evidence in detail." (R. p. 843).

In its findings the Commission said:

> "The primary reason set forth by the Departments for the institution of this investigation was the large turnover of employees in the Virginia installations. It was the thought that the transportation charges were an important underlying cause. The evidence bears out this belief, although doubtless, there are other important causes." (R. p. 850).

In its supplemental report the Commission said:

> "It is clear that in order to ensure for the transportation here considered fares that do not exceed a level operating against the full efficiency of the important services performed at the Virginia installations in the conduct of the war, it is essential that the fares be subjected to regulation. As above said, it is considered and has been shown that the existing fares are having an effect detrimental to such services and there can be no assurance against the charging of excessive fares except by subjecting them to regulation." (R. p. 819).

In fact, the sole basis for the Commission order is its assertion of dissatisfaction on the part of federal employees with the fares.

In time of war a charge that a given condition is a detriment to the war effort is a serious charge, and at any time the opinions of the Secretaries of War and Navy are entitled to great respect. But unsupported assertions and expressions of opinion cannot be substituted for facts. A quasi-judicial tribunal such as the Interstate Commerce Commission, and the Courts, cannot base determinations upon unsupported assertions. The rule, applicable in time of war as in time of peace, is that a finding of fact must be supported by substantial evidence.

The evidence presented by the War and Navy Departments on this phase of the case is in two parts, (1) relating to the rate of "separations" at the Virginia installations, and (2) evidence as to the attitude of employees at those installations toward the bus fares and service.

The witness as to the rate of separation was Dr. Edward E. Franklin, statistician in the Office of the Secretary of War. He presented Exhibit 23 (R., p. 970), which he stated shows the separations at the Air Force Annex, the Pentagon and the "accessible" locations in the District (R., p. 74). It was based on the War Department report for May of 1943. It shows that the average separation rate among civilian personnel at Gravelly Point is 6.75 per cent, at the Pentagon 4.46 per cent, and for Gravelly Point and the Pentagon combined 4.70 per cent, and at "accessible locations in the District of Columbia" 3.26 per cent (R. p. 74). On cross-examination this witness stated that "separations" include those who are discharged, those who quit, those who transfer to another Government department, and those who are inducted into the armed services (R. p. 75). He stated that the term "accessible locations" in the District of Columbia did not include the Quartermaster Corps or the Finance Department (R. p. 75). Exhibit 23 was prepared on August 17, 1943, and it developed that the witness had prepared a similar exhibit under date of July 31, 1943 (R. p. 81), which was a preliminary analysis of essentially the same data which included the "inaccessible" locations within the

District (Ex. 34; R., p. 981). This exhibit shows that the so-called "inaccessible locations in D. C." had an average separation rate of 5.6 per cent, as compared to an average separation rate in all the Virginia installations of 4.7 per cent. On further cross-examination the witness stated the Finance Department, which he included as an "inaccessible" location, was located principally at 801 Exchange Place, Northeast, which the witness thought is served by both street car and bus (R. p. 572), and in part at the War Department Building at 23rd and D Streets, Northwest, which has both street car and bus transportation nearby (R. p. 573). The separation rate for the Finance Department was 6.7 per cent for the month of May.

The witness further testified that the total separations for the War Department in metropolitan Washington for May were about 5.3 per cent (R. p. 80).

Thus the simple fact is, as proven by the statistician produced by the War Department, that the rate of separation for the Virginia installations is less than the average for employees of the Department in the whole Metropolitan Area, 4.70 per cent for the Virginia installations against 5.3 per cent for the Metropolitan Area. It was only by excluding some Departments in the District which had high separation rates, 6.7 per cent for Finance and 5.1 per cent for the Quartermaster (p. 11 of Ex. 99; R., p. 1033), and terming the remainder "accessible locations", that the Department was able to produce Exhibit 23, alleging a rate of only 3.26 per cent for "accessible locations" in the District of Columbia.

The second part of the evidence on this point concerns the attitude of employees at the Virginia installations toward the transportation fares. The Departments presented two groups of witnesses to testify on the point. The first group consisted of five employees (R. pp. 366, 368, 370, 372, 374). These witnesss were asked whether they felt that the bus transportation is too high. The first replied, "Well, I do feel $7.50 is quite a bit to pay for transporta-

tion" (R. p. 367). The next three said, "Yes", and the fifth responded with a question and then said that she felt it would be much fairer if her pass were good for the trip to the Pentagon (R. p. 375).

The second group of witnesses were four employees who worked with the personel at Pentagon and Gravelly Point (R. pp. 376, 380, 384, 385). The first testified that her duty was to give interviews to incoming and outgoing employees (R. p. 376). Asked the question, "Now, do you receive a lot of complaints about the transportation service to the Pentagon and particularly the high cost of it?", the witness replied, "We receive some". Pressed twice again with the question (R. pp. 378, 380) as to whether transportation was a "principal cause", a "material factor", the witness would only say, "Transportation is a cause of complaint in a great many instances", and "We have complaints in regard to the distance of transportation, and in regard to the confusion on transportation routes, and in regard to the crowded conditions on the several buses, and also the expense involved" (R. p. 378). The second witness, also employed in interviewing employees when they leave the Department, was asked the question, "Can you tell us what the principal causes are for employees leaving the service?" (R. p. 381). She replied, "Well, there are a lot of causes and so many factors that contribute to it that it is hard to say any particular thing, they want to go back home, living cost in Washington" (R. p. 381). And again she said, "I would not say that they leave because of transportation. * * * I would say that it is a contributing factor but not the main reason for their leaving" (R. p. 381).

The third witness was the personnel officer for the Air Transport Command at Gravelly Point, which has only 450 employees (R. p. 384). This witness testified that transportation is one of the two factors for dissatisfaction, and he was then asked, "And do these complaints concern themselves particularly with the high cost of getting to Gravelly

Point?". He replied, "Well, it goes further than just the high cost; there is also the number of changes that they have to make, location, crowded buses, and so forth. They also mention cost" (R. p. 385). On cross-examination he said that the transportation problem is one of the factors, it is not the main factor (R. p. 385).

The fourth witness of this group was the Chief of the Personnel Relations Branch of the Army Air Forces at Gravelly Point. Asked to tell some of the principal causes of complaint that employees offer when they quit, the witness said, "Well, their difficulty, when they leave, the particular cause or causes, the work isn't right, someone needs them at home, but what really is true when you begin to talk with them is that they are disgusted with life in Washington. The salary looks awfully good to them when they come here, and when they find out that they do not have any left at the end of the time, why, they are ready to quit" (R. p. 386). Pressed again to give some of the reasons for dissatisfaction, the witness said, "It is getting tired of being in Washington and not having any money". Asked, "Is transportation an element in that dissatisfaction?", the witness said, "Yes, it is". Asked to elaborate on that a little, she said "Well, at Gravelly Point, you know, the people pay 10 cents to get over from 12th and Pennsylvania where they only pay a nickel at the Pentagon, and we just hear that. If you like, I might give you an impression now; I don't know the ins and outs of that bus fare, but they keep complaining why can't we ever have a pass that will bring us clear over here, or why do we have to pay 10 cents when we don't go any farther than the people in the Pentagon Building that only pay 5 cents" (R., p. 387).

That was the sum total of the evidence presented by the War Department on the dissatisfaction of employees. Not one of the witnesses produced was emphatic about the matter. Not one assigned bus fares a major place in employees' complaints. There is no evidence in that testimony upon which any quasi-judicial tribunal could base a

finding that these transportation fares cause such dissatisfaction among employees as to impede the war effort.

Another important phase of the evidence regarding the dissatisfaction of employees is Exhibit No. 19 (R., pp. 966-7), which shows that more than thirty-three per cent of the employees rode on the buses of the Virginia companies, notwithstanding the fact that the fare on the buses of the Capital Transit Company was five cents less. If the employees were so dissatisfied over fares, clearly a third of them would not pay 10 cents when the same ride could be had for 5 cents.

In the beginning of the argument on this point we asserted that on the record we proved affirmatively that the transportation fares were not a major cause of dissatisfaction. This proof is in two parts. First, it is in two official publications (Exhibits 99 and 100). The witness Franklin, statistician in the Office of the Secretary of War, identified an official publication of the War Department entitled "Statistics on Civilian Personnel" for May, 1943, (Ex. 99, R. p. 1033) and for June, 1943, (Ex. 100, R. p. 1036) published under the supervision of the Department's Director of Civilian Personnel and Training.

These official statistics of the War Department on civilian personnel for the months of May and June, 1943, which are the months to which the Department witnesses directed their attention, contain specific statements as to the "Reasons given by employees for desiring separation". (R., pp. 1036, 1040). These exhibits show that out of 1,050 employees separated in May, only 7 assigned transportation as the reason, although transportation was the second item on the form, which contained 25 items (R. p. 1036); and that in June, out of 1,385 employees separated, only 10 assigned transportation as the reason (R. p. 1040). Furthermore, both Exhibit 99 and Exhibit 100 contain a narrative paragraph discussing "Reasons for Separations", and in neither Exhibit is transportation mentioned among the principal factors (R., pp. 1034, 1037).

The other phase of the evidence on the point is in the questionnaires which were distributed to War Department employees. As we have already stated, the questionnaires were distributed to employees at the Virginia installations and a sample was introduced as Exhibit 33 (R. p. 979-80). Some 25,000 of these questionnaires were returned. The questionnaire begins with a statement "Your personal welfare demands that you fill out and return the following questionnaire at once to your supervisor". It contained a blank space for "Comments on bus service" (R. p. 980). Counsel for the companies demanded that the questionnaires be brought to the hearing for their examination. After the questionnaires had been examined by counsel for the companies, counsel for the War Department stipulated that a majority of the people making any comment upon the bus service said that it was "good" or better, and that there were very few, "a tremendously small number", "an insignificant number", who mentioned the fares (R. p. 614-616).

Thus the evidence from the official publications of the War Department, showing statistically the results of interviews with employees who were separating from the service, showed that a wholly insignificant number (17 out of 2,435) gave transportation as the reason for leaving, and further, that when the employees were told that their personal welfare demanded that they fill out a questionnaire, and were specifically asked to "comment" and 25,000 did fill them out, "an insignificant number" even mentioned the fares and the majority of the comment was complimentary to the bus service. We again assert that this evidence affirmatively proves that the transportation fares are not a major cause of dissatisfaction among these employees.

These charges by counsel for the War Department, and this finding by the Commission that the fares of these companies impede the war effort is not an unimportant recitation. It is the mainspring of the order in this case. And,

more important, it is a serious reflection upon companies and officials who have been striving to solve a difficult transportation situation which they did not create but which was created by this very Department in the face of written warning as to what was being done. The finding of the Commission is without substantial evidence; it is without a scintilla of evidence; it is directly contrary to uncontroverted official evidence.

VII.

No Legal Basis is Shown for a Reduction in Fares.

The orders of the Commission not only assert jurisdiction but also reduce the fares.

The Court will have difficulty in finding in the reports of the Commission (R. pp. 835-851; 813-825) the basis for the reduction in the fares. As we analyze the reports, the only basis stated is in the first report, as follows (R. p. 850):

> "The persons using this service, like others who utilize public vehicles, are, for the most part, in a relatively low income class. The record warrants the conclusion that the existing charges are higher than they should reasonably be called upon to bear. It is elementary that value of the service, ability to pay, or what the traffic will bear, is an element properly entering into the fixation of reasonable transportation charges. We know of no reason why that principle is not applicable here."

We note what seems to us to be a curious identification of ideas in the foregoing quotation. Value of service, ability to pay and what the traffic will bear are made synonymous as one "element" and one 'principle", and are integrated with the income status of the customers as a measure of reasonable charges.

No definition or explanation is given as to what is a "relatively low income group". These customers are government employees, paid on scales fixed by Congress and the

Civil Service Commission. Curiously enough, their employer, the United States government, complains that they are insufficiently paid. We do not know how regulatory commissions are to determine the income status of customers, if that becomes a principle of rate-making.

No finding is made as to inadequate or unsatisfactory service as such, or in relation to the fare paid. The only finding as to costs, as we have already said, is that the cost to the Capital Transit Company is 5 cents per passenger per trip, without including any return on the investment, and the fare is only 5 cents. There is no evidence whatever of any nature upon which a valid finding could be made that the existing rates are unjust or unreasonable. The Commission must act upon evidence.

Appellees insist that the Court will not find in the reports of the Commission in this case any finding or statement which ever has been, or ever can be, accepted as a principle upon which transportation fares can be reduced by regulatory authority. The Commission itself said in *Stuart* v. *N. and W. Ry. Co.*, 191 I. C. C. 13, 18, that the applicability of rates "is not dependent on the ability of the shipper to pay."

VIII.

APPELLANTS' BRIEFS.

We have addressed the foregoing argument directly to the validity of the Commission's orders. But it seems proper that as Appellees we make comment on the briefs filed by Appellants, pointing out some of the difficulties encountered by them in attempting to sustain their position.

1. At the bottom of page 27 of its brief, in presenting its views on the statutory requirement for Joint Boards in complaint cases, the Appellant United States finds a necessary premise to be that the letters of the Secretary of War, which initiated these proceedings, were not a complaint "but were at most an expression of dissatisfaction with

existing rates and a request for an investigation." Puzzling over what a complaint could be other than an expression of dissatisfaction and a request for an investigation, we note that the United States says that the letters were not a complaint "in any formal or technical sense". Thus the argument seems to be that if a document filed with the Commission contains an expression of dissatisfaction with rates and a request for an investigation, nevertheless there are additional "formal or technical" requirements the absence of which permits the Commission to exclude Joint Board consideration. The United States does not describe these requisite formalities and technicalities. But its argument makes clear that its whole position as to the Joint Board question rests not upon substance but upon some undefined formality or technicality as to what it deems a complaint under the statute.

The United States also says (Br. p. 28) that "The hearing was described at the outset by the presiding Commissioner as 'an investigation instituted at the request of the Secretary of War into the reasonableness and lawfulness' of certain interstate fares." The argument is not completely candid. The presiding Commissioner did make the statement quoted (R. p. 2) in opening the proceeding, but a few minutes later he put into the record (R. p. 10) a letter which he, as the officer to whom the case has been assigned, wrote the War Department, stating, "Since this investigation was instituted at the request of the War Department, which alleged that the existing fares were excessive, it is in the nature of a complaint * * *." He stated that that letter "has been approved by the entire Commission" (R. p. 10). He thereupon directed the War and Navy Departments to proceed with the presentation of evidence, as is the custom in complaint cases.

2. The United States bases its argument as to the applicability of the national transportation policy upon two premises (Br. pp. 23-25).

It argues that the alleged dissatisfaction of employees shows the unreasonableness of the rates. We have already discussed that proposition; (a) no such dissatisfaction is shown by the evidence, and (b) even if shown, mere dissatisfaction of patrons is not a legal basis for the reduction of rates.

It then argues (Br. p. 25) that fundamentally if the maintenance of economical mass transportation service to important war centers "is *within the purview* of the national transportation policy", the Commission properly took jurisdiction. The statute shows the fallacy of the proposition. The statute says (Sec. 203(b)7(a)) "to the extent that the Commission shall from time to time find that such application *is necessary* to carry out the national transportation policy * * *." The word which gives federal jurisdiction is the word "necessary". Federal regulation must be "necessary". Facts make necessity. The statute pointedly and unmistakably does *not* say that federal regulation shall apply *wherever* employees move to war centers. A factual necessity must exist to confer federal jurisdiction. No such necessity exists in the instant case, as the record clearly shows.

Perhaps a better test of the meaning of the statute comes from a consideration divorced from war atmosphere. The statute refers to "commerce" and to the "postal service" equally with national defense in the definition of the national transportation policy (Act of Sept. 18, 1940, c. 722, Title I, sec. 1, 54 Stat. 899). Let us visualize employees traveling to and from a post office, or to and from a place of commerce. The statute does not say that fundamentally the Commission could properly take jurisdiction over the local transportation fares there involved merely because the postal service and commerce are within the purview of the policy. It says that such federal regulation must be *necessary*. The same rule applies in the case at bar.

The Appellant Commission advances a third premise on the point. It argues that the fares "were regarded as ex-

cessive" by high Government officials (Br. p. 27), that these officials "considered" that Commission jurisdiction over the fares was necessary to the war effort, and it says, "It is apparent that, in order to be of that opinion, such officials need not have had before them facts and figures showing that the war effort was being materially affected." (Br. pp. 27 and 57.) It argues that the Commission is authorized and expected "to *anticipate* any such material hampering of the Government's war work" (Br. p. 58).

The argument is subtle. Its end result spells its fallacy. In substance it is that if high Government officials, without facts or figures, "consider" transportation fares to be excessive, even though war work (or commerce or the postal service) has not been materially hampered, federal regulation is *necessary;* in the absence of facts but in the presence of the opinion of high government officials, the Commission may "anticipate". We cannot find any such doctrine in the statutes or in the cases. A factual necessity for federal jurisdiction must be shown.

3. Curious inconsistencies between different sections of the briefs appear. In arguing that the Commission orders do not in any manner regulate intrastate transportation, the United States says, "The only rates regulated by the present order are those in interstate commerce" (Br. 37). This seems to mean that, in the view of that Appellant, the Commission has established interstate rates quite separately and apart from the intrastate rates already in effect; it has not regulated in any manner fares for intrastate commerce; it has established 10 cents cash, 8⅓ cents tokens and a $1.25 pass as interstate fares for the Capital Transit. Under that view, the identity of the interstate fares and the intrastate fares of Capital Transit is a coincidence. And so they must be, to support the argument of the United States that the Commission has not in any manner regulated intrastate fares.

But when the same Appellant comes to argue that the Commission has not prescribed commutation fares, it says

(Br. 39), in respect to Capital Transit, "The order simply provides that the existing fares shall apply to the transportation here involved." The existing fares are intrastate. (We assume that Appellant did not mean to include the additional 5-cent fare to the Pentagon now existing.) So in this argument Appellant says that the Commission has not prescribed 8⅓ cents tokens or $1.25 pass, it has merely enlarged the application of existing intrastate fares.

The two arguments when placed in juxtaposition vivify the dilemma of Appellants. Either the Commission has prescribed 8⅓ cents tokens and a $1.25 pass as an interstate fare, in which case it has prescribed a commutation fare in violation of its authority under Sections 217(b) and 22; or it has ordered that intrastate fares be expanded to cover extra-District transportation, in which case it has violated the proviso in Section 216(e).

4. Another curious argument is made by Appellants in regard to the requirement of the Commission that Capital Transit expand its District fares to include the Pentagon (Br. of U. S. p. 43; Br. of I. C. C. p. 48). The argument is that since the *average* distance traveled by Pentagon employees is less than the *maximum* traveled by intra-District passengers, therefore, the fare charged the latter is reasonable for the former. Any such doctrine, if established as a rule of regulation, would destroy almost all suburban zone systems of fares. The *average* distance traveled by persons living in a city of any size and working in a suburb is almost always less than the *maximum* possible to be traveled by a person inside the city. In other words, the *average* city trip plus the usual first suburban zone is usually less than the *maximum* possible city trip.

The validity of zone fares cannot be tested by a comparison of *averages* with *maxima*. It must be tested by a comparison of average with average.

In the instant case employees traveling from points in the District to the Pentagon travel an average of 6.21

miles, of which 2.6 miles[21] is in the District, between the points of origin and the downtown bus termini. Since these termini are in the midst of the downtown government buildings in the District, it seems fair to assume that employees in those buildings travel the same average distance, i.e., 2.6 miles to and from their points of origin. Thus, it is clear that the average ride of a Pentagon employee is 6.21 miles and the average ride of a government employee in downtown Washington is 2.6 miles. The former is 2.4 times the latter. If distance is to be the criterion of fares in a zone system, average distances must be used, and on that principle the Pentagon fare should be 2.4 times the District fare.

5. The Appellant Commission repeatedly states that through routes are already in effect between the companies (Br. pp. 40, 41, 42, 74, 91, 92, 94, 96). The Appellant United States is more circumspect in its language on the matter. It says (Br. p. 37), "Through routes *in a practical sense* were in effect;".

There is not one word of evidence in the record to the effect that through routes exist between the bus companies. And there could be no such evidence because there are no through routes.

In the latter part of the Appellant Commission's brief the basis for these repeated statements is spelled out (Br. pp. 96-100), largely in a footnote. The Commission says that the fact that thousands of people travel daily from their homes in the District to their places of work at the Virginia installations creates through routes between the different companies whose facilities these people use.

The facts have been repeatedly stated. These employees move from their homes to downtown Washington along with hundreds of thousands of other people similarly bound downtown, and pay a District fare for this intra-District

[21] Exhibit 12, R. p. 960, shows that the distance from the termini to the Pentagon is 3.6 miles. The remainder is 2.6 miles.

service. They then board a bus of another separate and independent company and pay another fare for the interstate ride to their place of employment. The only "through" feature of the transportation is in the individual's mind and purpose.

Thousands of persons daily travel from their homes in the District by taxicab to Union Station and thence by the Pennsylvania Railroad to New York. Are the taxicabs on "through routes" with the railroad? Thousands of people travel daily by bus or car from points in New Jersey to the Hudson River ferries, thence by subway in Manhattan to their places of work. Are the ferries, by virtue of that fact alone, on "through routes" with the subways? So in Chicago, where the railroads run dozens of trains daily northshore into Wisconsin. The doctrine proposed by Appellants would give jurisdiction to the Commission over the local intra-city fares paid by the patrons in all these and similar instances. It would indeed be a revolutionary innovation in local-federal relationships.

Appellants project as an analogy a freight shipment on a single through bill of lading. The inappropriateness of the analogy is evident. These passengers do not travel on through tickets.

6. In regard to Capital Transit District fares, the Appellant Commission makes the following argument (Br. of I. C. C. p. 48):

> "With respect to these considerations the Commission says that it is unable to accept the contention of the carriers that a proper demarcation line for the application of District zone fares is the mere political boundary between the District and Virginia, and it concludes that the Virginia installations just beyond the boundary should reasonably and properly be included within the District area or base zone."

Apply the same reasoning to New York City. The Commission might refuse to accept the Hudson River as the proper demarcation line for the application of the 5-cent

New York City fare, and conclude that New Jersey installations just across the line should be included in the New York City base zone.

The fact in the case at bar is that Congress itself determined that the District of Columbia, as a political or geographic entity, should be a unit for fare-making. The demarcation is not a mere contention of the carriers.

In its Act of March 3, 1913 (37 Stats. 974; Sec. 43-306, D. C. Code, 1940 Ed.) Congress created a public Utilities Commission of the District of Columbia, and gave it jurisdiction over all public utility rates within the District. It provided, "This section (the P. U. C. Act was Section 8 of an Appropriation Act) shall apply to the transportation of passengers, freight or property from one point to another within the District of Columbia * * *" (par. 1). And it provided, "That the commission shall value the property of every public utility within the District of Columbia * * *" (par. 7). And it further provided, "That every public utility shall file with the commission * * * schedules * * * showing all rates, tolls and charges * * * for any service performed by it within the District of Columbia * * *" (par. 24). And also, "That it shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, * * *" (par. 30). And again, "That whenever * * * the commission shall find that any rate, toll, charge, regulation or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix and determine the same as provided in this section" (par. 88.).

Thus Congress created a unit for utility regulation and fixed its limits at the boundary lines of the District. It is surprising to find the Interstate Commerce Commission characterizing the situation as a "contention of the carriers", and announcing that it is unable to accept the bound-

aries of the District as the "proper demarcation line for the application of District zone fares". If the Commission disagrees with Congress on the subject, we respectfully submit that the matter is one neither for the Commission nor for the Courts, but is one for Congress.

An important connotation to the District statute just cited should be noted. Paragraph 30, as quoted, provides that it shall be unlawful for a utility to charge for service performed within the District either more or less than the rate fixed in its schedules or determined by the District Commission. Thus Capital Transit must, by requirement of the statute, charge the full District fare for service within the District. The order of the Interstate Commerce Commission would, therefore, necessarily mean that Capital Transit must carry Pentagon passengers from the District Line to the Pentagon for no charge at all. The full fare collected under the I. C. C. order, being the District fare and no more, would be received, by statutory requirement, for the service within the District. The point illustrates the complete chaos which ensues when the Interstate Commerce Commission attempts to lay a heavy hand on a situation already meticulously regulated by Congressional and State enactment, and attempts to apply to local mass transportation the principles applicable to national interstate transportation problems.

In the foregoing comment we have not attempted an exhaustive analysis of all of the arguments of the Appellants, nor have we referred to mere dicta in the briefs. The few select portions which we have discussed in this section of our brief are major premises to the Appellants' argument. If these premises will not stand analysis, the entire position of Appellants likewise fails.

CONCLUSION.

It is respectfully submitted that the judgment of the District Court should be affirmed.

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APPENDIX.

Interstate Commerce Act.

Part I.

Section 22. Restrictions.

"Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this chapter shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this chapter shall be construed to prohibit any common carrier from establishing by publication and filing in the manner prescribed in section 6 of this title reduced fares for application to the transportation of (a) personnel of United States armed services or of foreign armed services, when such persons are traveling at their own expense, in uniform of those services, and while on official leave, furlough, or pass; or (b) persons discharged, retired, or released from United States armed services within thirty days prior to the commencement of such transportation and traveling at their own expense to their homes or other prospective places of abode; nothing in this chapter shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the free carriage, storage, or handling by a carrier of the household goods and other personal effects of its own officers

or employees when such goods and effects must necessarily be moved from one place to another as a result of a change in the place of employment of such officers or employees while in the service of the carrier, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies; nothing in this chapter shall be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide or seeing-eye dog or other guide dog specially trained and educated for that purpose at the usual and ordinary fare charged to one person, under such reasonable regulations as may have been established by the carrier: *Provided,* That no pending litigation shall in any way be affected by this chapter: *Provided further,* That nothing in this chapter shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this chapter, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this chapter; and all the provisions of said section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section 6. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a

greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section 10 of this chapter shall apply to any violation of the requirements of this proviso. Nothing in this chapter shall prevent any carrier or carriers subject to this chapter from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the Commission (with or without a hearing); but in any such order the Commission shall (1) define such section, (2) specify the period during which such reduced rates are to remain in effect, and (3) clearly define the class or classes of persons entitled to such reduced rates: *Provided*, That any such order may define the class or classes entitled to such reduced rates as being persons designated as being in distress and in need of relief by agents of the United States or any State authorized to assist in relieving the distress caused by any such calamitous visitation or disaster. No carrier subject to the provisions of this chapter shall be deemed to have violated the provisions of such chapter with respect to undue or unreasonable preference or unjust discrimination by reason of the fact that such carrier extends such reduced rates only to the class or classes of persons defined in the order of the Commission authorizing such reduced rates." Title 49 U. S. C. A. Sec. 22; Acts of Feb. 4, 1887, c. 104, Part I, § 22, 24 Stat. 387; Mar. 2, 1889, c. 382, § 9, 25 Stat. 862; Feb. 8, 1895, c. 61, 28 Stat. 643; Aug. 18, 1922, c. 280, 42 Stat. 827; Feb. 26, 1927, c. 217, 44 Stat. 1247; Mar. 4, 1927, c. 510, § 1, 44 Stat. 1446; June 27, 1934, c. 847, Title V, § 511, 48 Stat. 1264; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; July 5, 1937, c. 432, 50 Stat. 475; Aug. 25, 1937, c. 776, 50 Stat. 809; Sept. 18, 1940, c. 722, Title I, § 3 (c-e), 54 Stat. 900, 901; Sept. 27, 1944, c. 423, 58 Stat. ——.

Part II.

(Motor Carriers)

Section 203 (b) (7a) (8). Vehicles excepted from operation of law.

"* * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in the Interstate Commerce Act, shall the provisions of this chapter, except the provisions of section 204 of this chapter relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction; * * *." Title 49 U. S. C. A. Sec. 303 (b); Acts of Feb. 4, 1887, c. 104, Part II, § 203, as added Aug. 9, 1935, c. 498, 49 Stat. 544 and amended June 23, 1938, c. 601, § 1107 (j), 52 Stat. 1029; June 29, 1938, c. 811, §§ 2, 3, 52 Stat. 1237; Sept. 18, 1940, c. 722, Title I, §§ 16, 18, 54 Stat. 919, 920.

Section 205(a). Joint Boards.

"The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any

of the following matters arising in the administration of this chapter with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under section 204 (a); and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in sec. 17. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this chapter. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are proposed to be conducted: *Provided,* That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however,* That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17. If a joint board to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving

such weight to such conclusions as in its judgment the evidence may justify." 49 U. S. C. A. Sec. 305(a); Acts of Feb. 4, 1887, c. 104, Part II, § 205, as added Aug. 9, 1935, c. 498, 49 Stat. 548 and amended June 29, 1938, c. 811, §§ 5-7, 52 Stat. 1237, 1238; Sept. 18, 1940, c. 722, Title I, § 20 (c, d), 54 Stat. 922, 923.

Section 216. Rates, Fares and Charges. (49 U. S. C. A. Sec. 316; Acts of Feb. 4, 1887, c. 104, Part II, § 216, as added Aug. 9, 1935, c. 498, 49 Stat. 558, as amended June 29, 1938, c. 811, § 16, 52 Stat. 1240; Sept. 18, 1940, c. 722, Title I, § 22(b-d), 54 Stat. 924.)

"(a) Duty to establish reasonable rates, etc.; service and equipment; rules and regulations; reasonable divisions of joint fares. It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

* * * * * * * * * *

"(c) Through routes and joint rates. Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or

charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

"(d) Undue preferences or prejudices prohibited. All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

"(e) Complaints to and investigation by commission; power of commission to fix reasonable rates, regulations, etc. Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express,

and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this chapter shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

BRIEF ON BEHALF OF THE STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, APPELLEE, AND THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AMICUS CURIAE.

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April 16, 1945.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

BRIEF ON BEHALF OF THE STATE CORPORATION COMMISSION OF THE STATE OF VIRGINIA, APPELLEE, AND THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AMICUS CURIAE.

Opinions Below.

The opinions of the District Court of the United States for the District of Columbia (R. 912-942), are reported in 55 F. Supp. 51 and 56 F. Supp. 670. The opinions of the Interstate Commerce Commission (R. 835, 813), are reported in 256 I. C. C. 769 and 258 I. C. C. 559.

Preliminary Statement.

The State Corporation Commission of the State of Virginia, hereinafter referred to as the "Virginia Commission," is an agency of state government of the State of

Virginia, existing under the provisions of the laws of the State of Virginia and having jurisdiction over motor carriers and street railways operating within the State of Virginia.

The National Association of Railroad and Utilities Commissioners, hereinafter referred to as the "Association," is a voluntary Association embracing within its membership the members of the regulatory commissions and boards of the several states of the United States except two, one of which has no state regulatory commission.

By the constitution of the Association, the President of the Association, and the Executive Committee, or either of them, may direct the General Solicitor to appear on behalf of the Association (as distinguished from a particular commission represented in its membership) in any proceeding pending before any court or commission in which, in the judgment of such President or Committee, appearance on behalf of the Association should be made. This brief is offered for filing on behalf of the Association by direction of the President in the general public interest.

Statement of the Case.

This is an appeal from a final decree of the District Court of the United States for the District of Columbia, setting aside and permanently enjoining an order of the Interstate Commerce Commission, hereinafter referred to as the "Commission," prescribing reduced passenger fares and joint fares applicable to transportation between the District of Columbia and certain government installations in nearby Virginia.[1] The carriers involved are The Capital Transit Company, the Alexandria, Barcroft and Wash-

[1] These installations hereinafter collectively referred to as the "Virginia installations", are the Pentagon Building, the Navy Arlington Annex, the Army Air Force Annex at Gravelly Point, and the Washington National Airport, all located in Virginia within a radius of 2.5 miles from the Virginia end of the 14th Street Highway Bridge across the Potomac River. (R. 913-914.)

ington Transit Company, the Arlington and Fairfax Motor Transportation Company, and the Washington, Virginia & Maryland Coach Company.[2]

The Transit Company furnishes regular urban and suburban street car and bus service for the transportation of passengers in the Distict of Columbia, sometimes referred to herein as the "District," and nearby Maryland. It also operates a street car line within the District which has its outbound terminal in Virginia at the south end of Francis Scott Key Bridge across the Potomac River, and two bus lines between the downtown business section of the District and the Pentagon Building. One of the Transit Company's bus lines which serves the Pentagon Building is operated over the Arlington Memorial Bridge, hereinafter referred to as the "Memorial Bridge," with its District terminal located at 19th and C Streets, N. W. The other bus line serving the Pentagon Building is operated over the 14th Street Highway Bridge, hereinafter referred to as the "Highway Bridge," with its District terminal located at 7th Street and Constitution Avenue, N. W. (R. 838).

The Virginia Lines render intrastate motor carrier passenger service in the State of Virginia subject to the regulatory jurisdiction of the Virginia Commission. The Virginia Lines also render interstate motor carrier passenger service between designated terminals in the downtown business section of the District, on the one hand, and points in Virginia, on the other. (R. 837). This interstate service includes, to the extent more particularly described in the briefs of the other appellees, service between the District and the four government installations. The Arlington Line and the Alexandria Line also perform intrastate service within the District, as set out more fully in the body of this brief.

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[2] Hereinafter referred to respectively as the "Transit Company", "Alexandria Line", "Arlington Line", and "Coach Company". The latter three companies are herein sometimes referred to collectively as the "Virginia Lines."

A uniform one-way interstate fare of 10 cents is maintained by the Virginia Lines between their District terminals and all points in zones ranging from 6.5 to 8 miles in extent, including the Virginia installations, with the single exception that the Alexandria Line sells a book of 26 tickets for $1.95 or 7.5 cents each, which are good for transportation between its District terminal and the Army Annex. (R. 839).

The fare on the Transit Company's bus routes operating between the District and the Pentagon Building is 5 cents each way, said company continuing to charge the regular fare for intrastate transportation on its street railway and bus lines in the District. (R. 838). This regular fare for Transit Company transportation within the District is a cash fare of 10 cents, 3 tokens for 25 cents, or a weekly pass for $1.25. These regular fares do not apply on the Transit Company's suburban service into nearby Maryland. A zone fare of from 5 to 20 cents applies beyond the District line. (R. 840). There are no joint fares or transfer arrangements between the Transit Company and the Virginia Lines.

On April 27, 1943, the Secretary of War wrote to the Commission, complaining that the fares charged by these four carriers for bus service between the District and the Virginia installations were excessive. Thereafter, on July 9, 1943, the Commission issued an order instituting a proceeding docketed as No. 28991 and entitled, "Passenger Fares Between District of Columbia and Nearby Virginia." The four carriers were made respondents in that proceeding. A hearing was thereafter held in Docket No. 28991, at which time the Virginia Commission intervened and became a party to the proceeding.

Upon the commencement of the hearing several of the appellees orally moved that the proceeding be discontinued for the reason that the bus operations in question of the Virginia Lines were, by reason of section 203(b) (8) of the Interstate Commerce Act, hereinafter referred to as the

"Act," exempt from the Commission's rate regulatory jurisdiction. (R. 3). In the alternative, some of the appellees moved that, if the Commission denied the motion respecting the question of jurisdiction, then in that event the proceeding be referred to a properly constituted Joint Board for a hearing and recommendation pursuant to section 205(a) of the Act. The presiding Commissioner referred the motions to the full Commission. He thereafter announced, during the course of the hearing, that the full Commission had denied the motion to refer the proceeding to a Joint Board and had deferred ruling upon the motion respecting jurisdiction until the record was completed. (R. 6, 7).

On January 18, 1944, the Commission (three Commissioners dissenting) issued its report and order in Docket No. 28991. (R. 835). By this report and order the Commission purported to require that the Transit Company and the Virginia Lines establish, maintain and apply to the transportation of passengers between points in the District, on the one hand, and the Virginia installations, on the other hand, other and different fares than those presently in effect, as described above. By this report and order the Commission also purported to require that the Virginia Lines establish joint fare arrangements with the Transit Company. The effect of this report and order, if it became effective, would be to reduce substantially the fares of all four carriers for service between the District and the Virginia installations. (R. 839, 850, 851).

On February 14, 1944, the Commission denied a petition for reconsideration duly filed by the carriers and the Virginia Commission. The matter was then brought on for review before a three-judge district court in the District of Columbia, and that court set aside the Commission report and order. (R. 912-921). The Commission thereupon reopened the proceeding for further hearing and reconsideration and on June 12, 1944, entered a supplemental report and order (two Commissioners dissenting)

reaffirming its original order. (R. 813). The appellees then brought the matter again before the three-judge district court[3] and that court (Judge Arnold dissenting) entered an order setting aside the Commission's supplemental report and order. (R. 942-953). The United States of America and the Commission thereupon instituted this appeal.

Summary of Argument.

I. (Pages 9-44). Two of the four carriers, the Arlington and the Alexandria Lines, are exempt from Commission rate regulation, under Section 203(b) (8) of the Act. The service in question of these two lines is performed entirely within the Washington, D. C. Commercial Zone, as determined by the Commission in 3 M. C. C. 243. Their operations also meet the requirements of the proviso to Section 203(b) (8), which limits the exemption to carriers lawfully engaged in intrastate transportation over the entire length of their interstate routes. The Commission's determination, under Section 203(b) (7a), that federal regulation is necessary in order to carry out the national transportation policy, is not supported by adequate findings. There is no finding that the national transportation system is in any way affected nor a finding that the objectives of the national transportation policy can be attained only by federal regulation. The Commission's legal conclusion that local authorities are constitutionally inhibited from regulating this commerce is disapproved by this Court's decision in *Port Richmond Ferry Co.* v. *Board of Chosen Freeholders*, 234 U. S. 317, and other cases. The Commission order is not severable as between the carriers and, being null and void as to the Arlington and Alexandria Lines, should be declared void as to all four carriers.

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[3] The original three-judge court was comprised of Circuit Judge Miller and District Judges Bailey and Letts. When the matter came before the court for the second time, Circuit Judge Arnold was, by stipulation, substituted for Judge Miller who was absent from the District.

II. (Pages 45-50). The Commission failed to refer this matter to a Joint Board for appropriate proceedings, as required by Section 205(a) of the Act. That section requires all "complaints as to rates, fares and charges of motor carriers" to be referred to a Joint Board where not more than three states are involved. This matter was initiated by the filing of an informal complaint. At the Commission hearing customary complaint procedure was followed. The statutory requirements could not be avoided or circumvented by Commission action in designating the proceeding an "investigation." Failure to refer the matter to a Joint Board is a fatal jurisdictional defect.

III. (Pages 51-54). The Commission order requires the Transit Company to render intrastate transportation service to holders of interstate weekly passes. This is a clear violation of Section 202(b), forbidding the Commission to interfere with the exclusive exercise by each state (including the District of Columbia) of the power of regulation of intrastate commerce by motor carriers. It also violates Section 216(e) of the Act, prohibiting the Commission from prescribing, or in any manner regulating, the rates, fares, or charges for intrastate transportation, or any service connected therewith. The Commission action will have far-reaching effects diametrically opposed to the plain and expressed intention of Congress.

IV. (Pages 54-62). The Commission order prescribes rates which are preferential, discriminatory and prejudicial to persons and localities in Virginia. If the prescribed rates become effective, persons residing in Virginia who are employed in the District of Columbia, will be required to pay higher fares than persons residing in the District who are employed at the Virginia installations, who ride in the same vehicles for the same or less distances. Such a result is expressly forbidden by Section 216(d) of the Act. In addition, to being discriminatory, this discrepancy in fares will place a burden on intrastate commerce in Virginia by requiring intrastate passengers to make up

the deficiency in revenue created by the reduction of fares to a special class of passengers traveling interstate between the District and the Virginia installations.

V. (Pages 63-77). The Transit Company is a street railway company. *Depreciation Charges of W. Ry. & E. Co.* 85 I. C. C. 126, and other cases. Street railway companies are not subject to Commission jurisdiction. *Omaha & C. B. Street R. Co.* v. *Inters. Com. Com'n.*, 230 U. S. 324. Enactments subsequent to the *Omaha case* did not bring street railroads under the rate jurisdiction of the Commission. Up until the instant case the Commission has uniformly distinguished between street railways and interurbans and, relying on the *Omaha case*, has consistently held street railways to be excluded from Commission jurisdiction. The Commission contention that there has been a co-mingling of street car and bus operations and, as a result, the Commission has been vested with jurisdiction over the Transit Company's street car operations, has no foundation in either fact or law. The doctrine announced in the *Wisconsin Railroad Commission case*, 257 U. S. 563, relied upon by the Commission, has no application here. The definition of "motor vehicle," in Section 203(a) (13) of the Act, expressly negatives the idea that the Commission can obtain jurisdiction over street cars under Part II of the Act.

Argument.

I.

Section 203(b) (8) of the Act exempts the Arlington Line and the Alexandria Line from Interstate Commerce Commission Jurisdiction.

Section 203(b) (8)[4] specifically exempts certain bus operations, carried on within a so-called commercial zone, from rate regulation by the Commission. The Commission has established such a zone in the Washington, D. C. area. *Washington, D. C. Commercial Zone*, 3 M. C. C. 243. The operations in question of the Arlington Line and the Alexandria Line are conducted wholly within that zone.

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[4] All statutory references are to the Interstate Commerce Act unless otherwise indicated. In the U. S. Code, title 49, the section numbers are 100 higher, the above sub-section being found at 49 U. S. C. 303 (b) (8). The pertinent portion of this sub-section, including paragraph (7a) which immediately precedes paragraph (8), reads as follows:

> "(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (7a) * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, *and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction.*" (Emphasis supplied)

In a double-barrelled attempt to negate this exemption, the Commission made two rulings. *First*, the Commission held that the exemption did not apply for the reason that the appellee carriers were not engaged in the intrastate transportation of passengers over the entire length of their interstate routes. A proviso of section 203(b) (8), shown in italics in the footnote, makes such intrastate operation a condition precedent to the attaching of the exemption. *Second*, the Commission found that, if the exemption did apply, then the operations in question should be removed from the exemption for the reason that application of the Act to such operations "is necessary to carry out the national transportation policy." Authority to remove bus operations from such exemption by making this kind of finding is contained in Section 203(b) (7a).

The Court below held against the Commission on each of these points. In fact, the Court below disposed of the case upon a consideration of these two jurisdictional questions pertaining to Section 203(b) (7a) and (8), and did not pass upon the numerous other points which were raised by the appellees. In so doing the Court held that the exemption under Section 203(b) (8) applied to all four appellee carriers. In conformity with the position taken by the Virginia Commission in the Court below, we will confine our argument on this phase of the case to the validity of the Commission's rulings as respects the operations of the Arlington Line and the Alexandria Line. It is our position, however, that if the order is null and void as to these two carriers, because exempt under Section 203(b) (8), the order should be held null and void as to all the appellees.[5] The two points referred to

[5] Under the review procedure provided by the Urgent Deficiencies Act (38 Stat. L. 219, 220, 28 U. S. C. 41 (28)), the court may enjoin, set aside, annul, or suspend *in whole or in part* any order of the Interstate Commerce Commission." (Emphasis supplied) Thus the Court has discretionary power to void the entire order or only parts thereof. A consideration of this order indicates, however, that it deals with all four carriers as a group, and that the

above, both pertaining to the exemption provisions of Section 203(b) (7a) and (8), will be separately discussed below.

(a) THE ARLINGTON LINE AND THE ALEXANDRIA LINE ARE ENGAGED IN THE INTRASTATE TRANSPORTATION OF PASSENGERS OVER THE ENTIRE LENGTH OF THEIR INTERSTATE ROUTES, WITHIN THE MEANING OF SECTION 203 (B) (8).

It is conceded by all parties that the Arlington Line and the Alexandria Line have full intrastate rights over their respective interstate routes in Virginia, and are exercising those rights. But the Commission found that this was not the case with respect to that portion of the interstate routes lying in the District of Columbia. In its original report of January 18, 1944, the Commission made the following finding:

> "... Under authority of the District Commission, the Alexandria and Arlington Lines perform certain intrastate transportation between a limited number of points in the District, but they are not authorized to render general urban service between all District points along their lines." (R. 839).
>
> "... the other Virginia Lines (the Arlington and Alexandria Lines) have only limited intrastate rights in the District and do not engage in intrastate transportation between all points along their lines in the District ... In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District it is *reasonably clear*

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order is not severable as between the carriers. The Commission took the entire transportation situation affecting the Virginia installations into consideration, and reached its conclusions on the basis of the overall situation. The Commission found that through routes existed between the Transit Company and the Virginia Lines. (R. 850.) It ordered that joint fares be established, including the use of ticket books and the issuance of transfers. (R. 851.) What the Commission might have done if only the Transit Company and Coach Company were before it, cannot possibly be determined from a reading of the orders. This being the case, the Court, in the exercise of its discretion, ought to void the order as to all carriers.

that their fares between the Virginia installations and the District are subject to our jurisdiction . . . " (R. 843) (Emphasis supplied)

After the Court below had held that the Commission misconceived the law in making this finding and the alternative ruling that application of the Act is necessary in order to carry out the national transportation policy, the Commission held a further hearing and issued its "Supplemental Report" of June 12, 1944. (R. 813). Finding the Court disposed to let the case turn on the jurisdictional question raised by Section 203(b) (7a) and (8), the Commission's Supplemental Report no longer voices a doubt as to the application of the exemption, such as was manifestly displayed in the original report. Now the Commission rules inapplicability of the exemption to be absolutely certain—not "reasonably clear". (R. 822, 825).

In the Supplemental Report, the Commission based its ruling that the Arlington and Alexandria Lines are not engaged in intrastate operations in the District of Columbia throughout the entire length of their interstate routes, upon two grounds, namely: (1) These lines have only limited intrastate rights within the District of Columbia over their Highway Bridge routes; and (2) Buses operating over the Memorial Bridge are not permitted to perform intrastate service within the District of Columbia.[6]

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[6] In support of this ruling, the Supplemental order (R. 822), also cites a number of Commission cases wherein it is asserted the Virginia Lines admitted the Commission's jurisdiction by applying for and receiving various authority from the Commission. None of these cases involve the Alexandria Line and the only cases which involve the Arlington Line are those to be found in 8 M. C. C. 573, 18 M. C. C. 267, and 25 M. C. C. 763. When those cases were current, the Arlington Line was not exempt under Section 203(b) (8), because its line extended beyond the Washington, D. C. Commercial Zone. (See footnote at 25 M. C. C. 763.) As a result of the Commission's decision in the last of these cases, decided August 8, 1939, the Arlington Line withdrew from operations in Fairfax County and confined itself entirely to the Washington, D. C., commercial Zone. In any event it is well settled that the Commission has only

(1) *The Commission ruling that the Section 203(b)(8) exemption does not apply because the Arlington and Alexandria Lines have only limited intrastate rights within the District of Columbia, over their Highway Bridge routes.*

On this point the Supplemental Report states:

> "Over the Highway Bridge routes they are also not authorized to engage in such transportation, (intrastate transportation) except between authorized stopping points one on in-bound and one on out-bound movements, opposite the Jefferson Memorial, and authorized stops north of Maine Avenue. *In other words, the companies are prohibited from engaging in any intra-District transportation in the area north of Maine Avenue.* The distance between the intersection of Fourteenth Street and Maine Avenue, S. W., and the terminal of the Alexandria Line at Twelth Street and Pennsylvania Ave., N. W., is about 1 mile over the route of that company. The only authorized stops south of Maine Avenue are those opposite the Jefferson Memorial." (Emphasis supplied) (R. 821-822).

The italicized portion of the above finding is clearly in error, as an examination of the orders of the Public Utilities Commission of the District of Columbia, hereinafter called the "Public Utilities Commission" or "P.U.C.", will clearly show. Under P.U.C. Order No. 2508, issued February 23, 1943, (Ex. 107, R. 781, 1049), the Arlington Line is authorized, on an inbound trip, to make five stops, after crossing the Highway Bridge, in addition to the terminal stop at 12th Street, N. W. and Pennsylvania Avenue. The first of these stops on an inbound trip is on 14th St. S. W., opposite the Jefferson Memorial. This is very close to the north end of the Highway Bridge. On such

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such power and jurisdiction as Congress has conferred upon it, and cannot acquire jurisdiction by consent, default or otherwise. *A. T. & S. F. Ry. Co.* v. *U. S.*, 284 U. S. 248; *U. S.* v. *Chi. M. St. P. & P. R. Co.*, 282 U. S. 311; *N. Y. Cent. Secur. Corp.* v. *U. S.*, 287 U. S. 12.

inbound trips the Arlington Line is authorized, under its P.U.C. permit, to receive passengers at the Jefferson Memorial stop, and to discharge them at any one of its other five stops, including the terminal, enroute to its terminal at 12th Street, N. W., and Pennsylvania Avenue.

On outbound trips, the Arlington Line is authorized to make three stops after leaving its terminal and before crossing the Highway Bridge. The last of these stops is on 14th St. S. W., opposite the Jefferson Memorial. The Arlington Line is permitted, on such outbound trips, to receive passengers at its terminal or the first two stops after leaving the terminal, and to discharge them at the Jefferson Memorial stop.

Thus the Arlington Line is authorized to render intrastate service throughout the entire length of its Highway Bridge route within the District of Columbia. Moreover, the Arlington Line actually engages in such intrastate commerce, from its terminal at 12th Street, N. W. and Pennsylvania Ave., to 14th St. S. W., opposite the Jefferson Memorial, near the north end of the Highway Bridge (R. 1050). The same is true with respect to the Alexandria Line, under authority of P.U.C. Order No. 2507, issued February 23, 1943, (Ex. 108, R. 781, 1052). The only difference is that the Alexandria Line has four stops, inbound, including its terminal, and the same number outbound.

It is true that on an inbound trip, neither the Arlington nor Alexandria Line can *receive* passengers after leaving the Jefferson Memorial stop. But passengers who were received at the Jefferson Memorial stop may be discharged at the other stops enroute to the respective terminals, and at the terminals themselves. It is also true that on outbound trips, these Lines may not *discharge* passengers at any stop within the District except at the Jefferson Memorial. But they may receive passengers at the respective terminals, and at the other stops enroute, for discharge at the Jefferson Memorial. Hence, although there are cer-

tain stops at which these Lines are not authorized to receive or discharge intrastate passengers, they do perform some intrastate service throughout the entire length of their District of Columbia routes over the Highway Bridge.

It is submitted that limitations upon the number or location of stops, or restrictions against receiving or discharging passengers at certain stops, do not operate to take a carrier out of the exemption of Section 203(b) (8), where the carrier is performing some intrastate service throughout the entire length of its route. The proviso reads, "... provided that the motor carrier ... is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction ..." There is here no requirement that the carrier stop at each and every intersection, or that it receive and discharge intrastate passengers at each and every stop it is authorized to make. So to construe the proviso is to read into it words which are not there. It is to read the proviso as if it said: "... is also lawfully engaged in *unlimited* (or *unrestricted*) intrastate transportation of passengers over the entire length of such interstate route or routes ..." This Court has many times said that it is not the Court's function "to engraft on a statute additions which we think the legislators logically might or should have made." *United States* v. *Cooper Corporation*, 312 U. S. 600, 605, and cases there cited.

Moreover, it must be clearly apparent that any such construction of the proviso would be wholly illogical and lead to absurd results. If it is necessary to have authority to stop at every intersection along the route in order to be engaging in intrastate commerce at that point, then, under the same reasoning, it would also be necessary to have authority to stop between intersections and at any place whatever along the route. The reasons which prompt the local authorities to forbid stops in the middle of the block are the same reasons which prompt those authorities to

limit the number of intersections where stops may be made.

Likewise, if it is necessary to have authority to receive and discharge passengers at each and every intersection along the route, in order to be engaging in *intrastate* commerce, this would also be necessary in order to be engaging ing *interstate* commerce along that same route. Yet the Commission certainly regards these carriers as being engaged in *interstate* commerce over that portion of their routes lying within the District of Columbia. The interstate motor carrier certificates issued by the Commission contain innumerable restrictions as to stopping places, and innumerable limitations on the carriers' authority to receive or discharge passengers at certain points. But no one has yet contended, least of all the Commission, that a carrier of interstate passengers is not engaging in interstate commerce over those segments of its route where there are limitations or restrictions of this kind.

It is a matter of common knowledge, of which this Court will take judicial notice, that bus lines entering municipalities from outside the city limits are seldom, if ever, permitted by local authorities to stop at each and every intersection in their progress towards the city center.[7] Hence, under the Commission construction of the proviso to Section 203(b) (8), there would seldom, if ever, be a bus operation to which the exemption could apply. It seems obvious that such an interpretation serves only to defeat the plain purpose of Congress.

As a matter of fact, Congress had in mind the identical Highway Bridge bus operation here in question, when it enacted Section 203(b) (8). Senator Wheeler, in charge of S. 1629—74th Cong., which became the Motor Carrier Act of 1935, (and Part II of the Act), said on the floor of the Senate on April 15, 1935:

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[7] The Commission itself has recognized that local authorities customarily limit the number of bus stops that may be made for the pickup and discharge of passengers. *Lincoln Tunnel Application*, 12 M. C. C. 184, 198; *New Jersey-New York Bus Application*, 28 M. C. C. 107, 111.

"...an exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between contiguous municipalities or commercial zones, as between New York City and New Jersey, and also, for instance, as between Washington and Alexandria, and other contiguous cities where the transportation is regulated by the local governments themselves.

"Transportation of passengers in similar localities or zones, provided the several States having jurisdiction regulate the operation, is also exempted and also casual or occasional or reciprocal transportation . . ." (Cong. Rec. Vol. 79, Part 5, Page 5650).

It is reasonable to assume that Senator Wheeler, when he made that statement, knew that buses operating between Alexandria and the District of Columbia were not authorized to stop at each and every intersection along the route within the District. And yet he supposed that Section 203(b) (8) would exempt that operation, and so advised the Senate.

The Commission interpretation of the proviso in question does violence to the intention of Congress. The Motor Carrier Act of 1935 exhibits, from beginning to end, the determined purpose of Congress to avoid conflicts and duplication between state and federal regulation.[8] Probably no other act of Congress, before or since, has gone to such

[8] See: Section 202 (b), reserving to the states exclusive exercise of the power of regulation of intrastate commerce; Section 203 (a) (14) defining the term "common carrier by motor vehicle" as a vehicle engaged in "interstate or foreign commerce"; Section 203 (b) (8), involved in the instant case; Section 204 (a) (4a), providing machinery for the exemption of carriers operating solely within one state; Section 205 (a) providing for joint board procedure; Section 205 (f), providing for conferences, joint hearings and cooperation between Federal and State Commissioners; Section 206 (a), containing a proviso exempting carriers operating solely within a single state from the necessity of obtaining a Federal certificate of convenience and necessity; and Section 216 (e), prohibiting the Commission from regulating intrastate rates or service.

lengths in an effort to preserve state jurisdiction over commerce having a local character. In its favorable report on S. 1629—74th Congress, the House Committee on Interstate and Foreign Commerce said:

> "... It seems the more information is obtained, the more apparent is the need for motor-carrier regulation in the public interest to preserve and develop a healthy, adequate, coordinated system of transportation. We can only have such a system by regulation of all agencies of public transportation in such a manner that there will be the least conflict between the State regulations and interstate regulation of motor carriers." (Report No. 1645—74th Cong., July 24, 1935—page 3.)

Pursuing that purpose Congress included the commercial zone exemption contained in Section 203(b) (8). But Congress did not want to exempt local interstate bus operations from Commission regulation in any case where to do so would leave such operations entirely unregulated. This would have worked an injustice against already existing local operators, for it would have opened the door for others to enter the local interstate field without securing a certificate from any agency of government. Chaotic conditions would have resulted. Senator Wheeler, in his statement to the Senate, explained the situation, and the reasoning behind the proviso to Section 203(b) (8) in these words:

> "The purpose of this exemption is to avoid duplication of regulation over bus operations, such as those conducted by street railways. However, the commission is authorized to take jurisdiction, where necessary, over buses operated within a municipality or between contiguous municipalities by motor carriers in interstate service and not so regulated by the States. The absence of such regulation has in some instances created chaotic conditions beyond the control of any State or municipal body . . ." (Cong. Rec. Vol. 79, Part 5, Page 5651).

It is clear, therefore, that there is not the slightest need of giving the proviso to Section 203 (b) (8) the broad application contended for by the Commission in order to accomplish fully the Congressional intent. The Alexandria and Arlington Lines perform some intrastate service throughout the entire length of their respective routes over the Highway Bridge. They are subject to regulation by the Public Utility Commission as to that intrastate service. Such regulation is not impaired in the slightest because of the fact that there are certain intersections where these buses may not receive or discharge passengers. In fact, the imposition of such restrictions is itself an exercise of regulatory jurisdiction by the Public Utility Commission. No "chaotic conditions" can result from these restrictions for they do not result from a *lack* of local regulatory power, but from an *exercise* of that power.

These lines are not free to engage in any intrastate operation within the District of Columbia except that expressly authorized by the local commission. Hence there can be no danger of injustice or undue competition with other bus lines also serving that area. The purposes and objectives of Congress in attaching the proviso to Section 203(b) (8) having thus been fully met, there is no occasion or warrant for excluding the Highway Bridge operations of these lines from the exemption provided by that section.

(2) *The Commission ruling that the Section 203 (b) (8) exemption does not apply because buses of the Arlington and Alexandria Lines, operating over the Memorial Bridge, are not permitted to perform intrastate service in the District of Columbia.*

Neither the Arlington nor Alexandria Line buses which operate over the Memorial Bridge are permitted to perform intrastate service within the District of Columbia. But an examination of the facts reveals that the bus operation over the Memorial Bridge is, in reality, an alternate loop of limited extent on the interstate route between Vir-

ginia and the District of Columbia, and not a "regular or irregular route or routes in interstate commerce," as that term is used in Section 203 (b) (8).

The operation of buses by the Arlington and Alexandria Lines over the Memorial Bridge is of comparatively recent origin.[9] Neither line was authorized to operate over the Memorial Bridge until February, 1943, when the Public Utilities Commission issued its order Nos. 2507 and 2508. (Ex. 108 and 107, R. 781, 1053, 1049.)

These orders specify the streets to be traversed in using the Memorial Bridge, and establish stop zones. The same District of Columbia terminals are stipulated as in the case of service over the Highway Bridge. To a substantial extent the street designations and stops are identical with those specified for service over the Highway Bridge. They differ only to the extent necessary to permit buses to operate over the Memorial Bridge instead of the Highway Bridge.[10] The north end of these two bridges are nine city blocks apart. Buses traveling over the Memorial Bridge traverse from 12 to 14 city blocks within the City of Washington, before connecting up with the Highway Bridge route. On inbound trips the Memorial Bridge line connects with the Highway Bridge line before the latter line reaches its terminal. On outbound trips the Memorial Bridge line follows along the same streets as the Highway Bridge line for several blocks, before separating to go over the Memorial Bridge.

It is thus apparent that the interstate operation of buses over the Memorial Bridge serves substantially the same persons, and substantially the same areas, as the operations over the Highway Bridge. By sending some of the

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[9] The Arlington Line began operating over the Highway Bridge in 1932. *Arlington & Fairfax Motor Transportation Co.—Purchase*, 25 M. C. C. 461, 465.

[10] During rush hours the Alexandria Line has authority, under Order No. 2507 (Ex. 108, R. 781, 1049), to turn back its inbound Memorial Bridge buses, before reaching its terminal, and send them back to Virginia over the Highway Bridge.

buses over the Memorial Bridge, congestion on the heavily traveiled Highway Bridge is lightened. But the same terminals and substantially the same stopping zones are used in each case.

Viewed realistically, then, the operation over the Highway Bridge is the interstate route between Virginia and the District of Columbia, for each of these lines. The Memorial Bridge operation is a departure from that route so minor in character as not properly to be regarded as a separate route within the meaning of Section 203(b) (8). It is not reasonable to suppose that Congress had in mind such slight variances from the normal and usual interstate route, when it used the term "regular or irregular interstate route or routes."

The Arlington and Alexandria Lines were required to obtain authority from the Public Utility Commission before initiating the interstate loop operation over the Memorial Bridge. Hence there was not, and is not, any danger that this operation may invade the interstate or intrastate rights of other operators, and no "chaotic conditions" to use the words of Senator Wheeler, referred to above, can result from exempting such operations from Commission jurisdiction.

Likewise, there would be no validity to the contention that the Memorial Bridge operation, if not constituting a "regular" interstate route, may at least be regarded as an "irregular" route within the meaning of the proviso. The term "irregular" route refers to an "anywhere-for-hire" operation which does not utilize two fixed termini. *United States* v. *Maher*, 307 U. S. 148, 155.

It is possible to argue that, in ordinary usage, the term "route" means a way used for going from one place to another,[11] and so any variation or loop in the streets and

[11] See *Atty. Gen.* v. *West Wisconsin R. Co.*, 36 Wis. 466, 494; 54 Corpus Juris, 1106. The Public Utility Commission orders authorizing service over the Memorial Bridge characterize those operations as "routes."

avenues traversed in going from one place to another constitutes a separate "route." But this reasoning overlooks the fact that we are not concerned with the meaning of the word "route" standing alone and unaffected by surrounding words and phrases or the intention of the draftsman. We are here concerned with the construction of the term "regular or irregular interstate route or routes" as used in Section 203(b) (8). The latter term must be construed in harmony with its context in the Act and with a view to effectuating the Congressional intent. So construed, it is clear that minor variations in the line of operation, having no effect upon the power of the local authorities to regulate and constituting no threat to the stability of other carriers, are not to be regarded as "regular or irregular route or routes," within the meaning of that Section.

The strained construction which the Commission contends for is entirely out of harmony with the Commission's own practice in issuing certificates for interstate service. Section 208(a) requires that "Any certificate . . . shall specify . . . the routes over which . . . the motor carrier is authorized to operate . . ." Under this provision the Commission has ordinarily described routes between cities in terms of particular highways. *Consolidated Freight Lines, Inc., Com. Car. Application*, 11 M. C. C. 131, 133. But when it comes to defining interstate routes *within municipalities*, the Commission has often been content simply to name the city and leave it to the local authorities to specify particular streets and avenues to be used.[12] The Commission followed that practice in the instant case when it authorized the Capital Transit Company to perform interstate service

[12] The Commission usually does not name particular streets and highways within city limits except where the exact routing within the municipality constitutes the very essence of the operation. *White Horse Pike Bus Company, Inc. Com. Car. Application*, 2 M. C. C. 79; *Nevin Midland Lines Com. Car. Application*, 4 M. C. C. 547. See, also, *Lincoln Tunnel Application*, 12 M. C. C. 184, 198; *New Jersey-New York Bus Application*, 28 M. C. C. 107, 111; *Cincinnati, N. & C. Ry. Co. Com. Car. Application*, 30 M. C. C. 423, 440.

between the District of Columbia and the Pentagon Building (R. 1019).

If the certificate specification of the route of an interstate carrier need not include the designation of streets to be traversed within a city, it is difficult to understand why a minor loop in the city operation must be regarded as a separate and distinct route within the meaning of Section 203(b) (8). If the Commission is at liberty thus to interpret the clear language of Section 208(a), requiring the route to be specified in the certificate, this Court is equally at liberty to construe the language of Section 203(b) (8) in a way that will give effect to the legislative intent. In *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, at page 55, this Court said:

> ". . . Where the plain meaning of words used in a statute produces an unreasonable result, 'plainly at variance with the policy of the legislation as a whole,' we may follow the purpose of the statute rather than the literal words. United States v. American Trucking Assoc., 310 U. S. 534, 543 . . ."

We are not unmindful of the general proposition that the courts will not give construction to an act of Congress which is expressed in plain and unambiguous terms. But as this court said in *Kirschbaum* v. *Walling*, 316 U. S. 517, at page 520:

> "Perhaps in no domain of public law are general propositions less helpful and indeed more mischievous than where boundaries must be drawn under a federal enactment between what it has taken over for administration by the central Government and what it has left to the States. To a considerable extent the task is one of accommodation as between assertions of new federal authority and historic functions of the individual states . . ."

The purpose of Section 203(b) (8) is to withhold, from the Commission, jurisdiction over interstate commerce of a purely local character. The purpose of the proviso is to

prevent that exemption from applying in a case where the result will be to leave interstate transportation within a local area entirely unregulated. The application of that proviso should not be extended beyond that absolutely required to achieve that purpose. It is not the proviso, but the section of which the proviso is a part, that expresses the dominant motive of Congress. That motive is to leave local transportation free and clear from federal regulation. The proviso should be construed in such a manner as to give effect, to the fullest extent possible, to that dominant motive. As the Commission itself said in *Palisano Common Carrier Application*, 30 M. C. C. 591, involving the construction of another exemption section, Section 202(c) (2):

> ". . . Reverting to the conditions which surrounded the enactment of this amendment, it is appropriate to point out that Congress had already manifested an intent to relieve us of jurisdiction over local carriers to some extent. That purpose was manifested by the inclusion of section 203(b) (8) in the original act. The present amendment suffices to expand the scope of the exemption as it stood previously so as to apply to cases of local cartage which were not covered by the existing exemption. It is therefore consistent with the known trend of the legislative intent concerning local cartage to adopt such a construction as would exclude from our jurisdiction all local cartage to which its language can reasonably be applied. *It would be foreign to that trend and clearly hostile to the general purpose of the legislation to adopt a construction which imposes a restriction based upon the purely technical and accidental feature of the form of the arrangement between the two carriers.* We are convinced that Congress had no such intention . . . (page 594)." (Emphasis supplied).

This Court has several times announced the same rule of statutory construction:

> ". . . in ascertaining the scope of congressional legislation a due regard for a proper adjustment to the local and national interests in our federal scheme must

always be in the background . . .'' *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 351.

See also:

Kirschbaum v. *Walling*, 316 U. S. 517, 520;
Palmer v. *Massachusetts*, 308 U. S. 79, 84.

(b) THE COMMISSION'S FINDING THAT APPLICATION OF THE ACT TO THE TRANSPORTATION IN QUESTION IS NECESSARY TO CARRY OUT THE NATIONAL TRANSPORTATION POLICY IS WITHOUT EFFECT BECAUSE NOT BASED UPON ANY ADEQUATE FINDING OF FACTS.

The so-called commercial zone exemption of Section 203(b) (8), is not an absolute exemption, but a conditional one. It may be removed by the Commission under certain circumstances. The power of the Commission to remove the commercial zone exemption is set forth in Section 203(b) (7a) as follows:

> ". . . nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part apply to: (8) . . . (transportation within commercial zones)."

At the time of issuing its original order of January 18, 1944, the Commission was plainly uncertain of its ruling that the Arlington and Alexandria Lines were not within the Section 203(b) (8) exemption because of their limited intrastate operations within the District of Columbia.[13] For the purpose of making doubly sure, therefore, the Commission sought to exercise its power, under Section 203(b)

[13] The Commission order states that "As to the Transit Company and the Coach Company, there is no doubt that we have jurisdiction. . . ." (R. 843.) No such unequivocal statement was made respecting the Arlington and Alexandria Lines. Instead, the Commission said, "In view of the fact that the Arlington and Alexandria Lines perform only restricted intrastate transportation in the District, it is *reasonably clear* that their fares . . . are subject to our jurisdiction." (Emphasis supplied)

(7a), quoted above, to remove these lines from the exemption. The original Commission order recites:

> "... In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203(b) (7a), necessary to carry out the national transportation policy ..." (R. 843).

The court below held that the Commission's conclusion respecting the national transportation policy was not supported by findings of fact, and was consequently without legal effect (R. 919). The Commission apparently recognized the inadequacy of the factual basis of its order and, instead of venturing an appeal from the judgment which had been entered, sought to improve its position by reopening the proceeding for a further hearing and further findings.

The reopening availed nothing. The court below reviewed the new evidence and additional findings and reached the conclusion that (1) the Commission has not made adequate findings to support the conclusion that the exercise of its jurisdiction is necessary to carry out the national transportation policy, and (2) the record does not contain substantial evidence upon which the Commission could make proper and adequate findings to support such a conclusion.

The first of these points is discussed below, under two subheads. We also rely upon the second point, relating to the *lack of substantial evidence*, but this matter is fully covered in the brief of the carriers and is therefore not argued in this brief.[14]

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[14] The absence of substantial evidence to support the finding that application of the Act was necessary in order adequately "to meet the needs...of the national defense" was clearly pointed out by the Court below, in these words:

> "As to the new evidence and findings of fact upon which the Commission undertakes to conclude that it has jurisdiction because it 'is necessary to carry out the national transportation policy' the Commission bases its conclusion chiefly on the find-

(1) *The national transportation policy is inapplicable because the transportation in question is local in nature, and not a part of the national transportation system.*

To support its conclusion that application of the Act to these carriers is necessary in order to carry out the national transportation policy, the Commission makes two general findings; first, that the present fares are unreasonably high; and second, that because of these unreasonable rates, the transportation in question is not adequate to meet the needs of the national defense (R. 819, 825). That these findings do not adequately support the Commission's conclusion that application of the Act to these carriers is necessary in order to carry out the national transportation policy, is demonstrable from an analysis of the declaration of policy itself.[15]

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ing that the employees of the Pentagon are dissatisfied with the fares charged by the carriers and the importance of the war work carried on at the Pentagon. As to the first ground, apart from the fact that the dissatisfaction of the employees with the fares charged by the carriers is ground for finding that their reduction is necessary to carry out the national transportation policy, *there is a mere scintilla of evidence* to support this finding. The Commission's findings were that many of the passengers to the Pentagon are low-salaried employees of the Government and that a representative group of them were dissatisfied with the fares. As to the latter finding, it clearly appears that the proportion of turnover of employees at the Pentagon did not exceed the average in government departments, and in only a very few instances did employees give the rate of fares as the cause of their dissatisfaction." (Emphasis supplied) (R. 944.)

[15] The national transportation policy, 49 U. S. C., preceding sections 1, 301, and 901 reads as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable

It will be observed that the national transportation policy first sets forth a number of specific benefits to be achieved, among them, "the establishment and maintenance of reasonable charges for transportation services . . ." The declaration of policy next sets forth the general field in which the Commission is to seek achievement of these specific benefits, the following words being used: "all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means . . ." Lastly, the declaration specifies the kind of national transportation to be attained, namely, a national transportation system "adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

The findings of the Commission cover the first and last of these three mutually dependent parts of the declaration of policy.[16] But they do not cover the second part, which is the core of the declaration. Stated differently, the Com-

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charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

[16] For the purpose of this brief it is assumed that the findings of fact are adequate as to these two matters. However, it should be noted that the Court below thought that the findings were inadequate on the national defense item. Said the Court: "As to the importance of the Pentagon in the prosecution of the war, Congress has not provided that the Commission could take jurisdiction merely because of the importance of transportation to or from a government agency. There must be more than this; it must appear that the war work of the government is materially affected and not merely that a small portion of the workers are dissatisfied with the rates of fare charged by the carriers." (R. 944.)

mission finds that the reasonableness of rates is involved in this case, and that the adequacy of transportation service to meet the needs of the national defense, is involved. *But there are no findings* that application of the Act to these carriers is necessary for the purpose "of developing, coordinating, and preserving a *national transportation system* . . ." (Emphasis supplied).

A local or urban transportation company, as such, is not a part of the interstate transportation facility of the nation, and it can never be a part of a national transportation *system* unless it is in some way integrated with other transportation units in such a manner as to become a part of the national network of interconnected transportation facilities.[17]

The Commission made no finding that the *national transportation system* was in any way involved. As a matter of fact the Commission found expressly to the contrary—it found that the transportation was local, urban mass transportation. In its original order the Commission said:

> "This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line, and is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District." (R. 849.)

In the supplemental order the Commission said:

> "We have held that the transportation here under consideration is essentially urban in character." (R. 823.)

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[17] "*System*. An aggregation or assemblage of objects united by some form of regular interactions or interdependence; a group of diverse units so combined by nature or art as to form an integral whole, and to function, operate, or move in unison and, often, in obedience to some form of control; an organic or organized whole, as, to view the universe as a *system;* the solar *system;* a new telegraph *system.*" (Webster's New International Dictionary, 2nd Ed., Unabridged.)

There is no finding or contention by the Commission that these local, urban carriers have any connection with or effect upon any other carrier either within or beyond the Washington, D. C., commercial zone. There is no finding or contention by the Commission that the operation of these carriers has any effect whatever upon the national transportation system. The reason why the Commission makes no finding or contention of this character is clear. Local carriers engaged in mass, urban transportation, operating independently of and without relation to other carriers which serve beyond the local area, are merely individual entities, the operations of which do not affect the national transportation system as a whole.[18]

Long before the national transportation policy became a part of the Act, the Commission had drawn a clear distinction between individual carriers and the "national transportation system." In the *Fifteen Per Cent Case*, 1931, Ex Parte No. 103, 178 I. C. C. 539, 585, the Commission said:

> ". . . All this is contrary to the spirit of the transportation Act, 1920. Congress then looked beyond the individual railroads to the concept of a national transportation system . . ."

This view was still more forcefully presented in a dissenting opinion by Commissioner Eastman when the *Fifteen Per Cent Case* came on for further hearing. Commissioner Eastman there said:

> "In that act (Transportation Act, 1920), Congress for the first time dealt with the railroads, not alone as individual entities, but also as parts of a national transportation system to be adequately maintained in the interest of the whole country. It saw that these parts

[18] This is not to say that, in effectuating the national transportation policy the Commission should not "give consideration to the circumstances of individual transportation units and to the needs of their patrons." (R. 819.) But those circumstances must show, and the Commission must find, that the individual transportation units are related to and effect the general transportation system throughout the nation.

were interrelated, that they were mutually dependent upon each other, and that the transportation service which the country required could not be adequately maintained unless *the whole of which they were parts, i.e. the national transportation system* was recognized and protected as such." (179 I. C. C. 215, 230.)

Heretofore the Commission has removed carriers from the exemption of Section 203(b) (8), only where it was shown that their operations were of an interterminal character, as distinguished from an intraterminal or urban character. The reason for this was patently because operations of an interterminal character are a part of, or effect, the national transportation system. The first of these cases was *St. Louis, Mo.-East St. Louis, Ill., Commercial Zone*, 1 M. C. C. 656, 663, where the Commission said:

> "The exemption provided in section 203(b) (8) applies to transportation between contiguous municipalities 'unless and to the extent' we find that the application of all provisions of the act is necessary to carry out the policy of Congress enunciated in section 202(a). We believe that that policy requires that the regulatory provisions of the act should, in general, be applied to interterminal transportation and that where, as in the case of East St. Louis and Belleville, two cities are contiguous in the sense that their boundaries join at some place but are not part of a single terminal, there should be no exemption."

The Commission took like action in *New York, N. Y. Commercial Zone*, 1 M. C. C. 665, 671, citing with approval the St. Louis decision, and adding:

> ". . . By restricting the commercial zones to areas which are adjacent to municipalities and contiguous municipalities, it is presumed that Congress intended to restrict such zones to those areas in which transportation by motor vehicle is in the nature of an intraterminal movement . . ."

A supplemental report was thereafter issued in the *New York* case, in which the Commission said:

> "... we were persuaded that the purpose of the exemption in section 203(b) (8) was to remove from Federal regulation operations which, although in interstate or foreign commerce, were nevertheless of a distinctively local or urban type, which we termed 'intraterminal' as distinguished from intercity or intercommunity operations ..." (2 M. C. C. 191, 192).

In *Los Angeles, Calif., Commercial Zone,* 3 M. C. C. 248, the Commission had before it a request by motor carriers that operations between Los Angeles and port facilities at San Pedro and other points, which were exempt under Section 203(b) (8), be removed from that exemption "in order to prevent unfair and destructive competitive practices between the motor carriers which operate to and from the port, and to carry out in other respects the policy of Congress declared in section 202." In granting this request the Commission said (page 252):

> "Because of the distance between the port and the main business and industrial sections of Los Angeles, and because of the nature of the transportation, the movement of property to and from the port is not local but intercity in character, and it should be regulated under all provisions of the act. We find that the removal of the exemption provided in section 203(b) (8) ... is necessary to carry out the policy of Congress enunciated in section 202 ..."

The two *New York* cases referred to above were sustained by a three judge statutory court in *Charles Noeding Trucking Co.* v. *United States,* 29 F. Supp. 537. Among the many issues involved in that review was the question of whether the Commission made adequate findings to support that portion of its order which removed certain areas from the New York commercial zone exemption. In upholding the Commission order, the Court held that the findings were adequate because they were to the effect that *inter-*

state or foreign commerce would be damaged unless this was done. In other words, the Court held that the findings supported the view that removal of the exemption was necessary in order to develop, coordinate, and preserve a "national transportation system." The Court said, on page 551:

> "While Congress created areas or zones of partial exemption by the provisions of Section 203(b) (8), it is obvious that Congress did not intend them to be continued in existence if transportation by motor vehicle through and to them, though between contiguous or adjacent municipalities or zones, *was not in the nature of intraterminal or urban cartage between localities commercially integrated and would work damage to interstate or foreign commerce.* The power to remove the partial exemption was vested by Congress in the Commission as a remedy for such damage. The Commission therefore makes a distinction, and we think that it is a logical one, between purely local or urban cartage, which it designates as 'intraterminal' in character and cartage of a kind not urban or local and not between municipalities or zones commercially a part of one another, viz., 'interterminal' transportation. We think that this construction of the statute is correct and is one justified by the established rules of statutory construction. Moreover, the Commission goes further and specifically applies its ruling to particular municipalities." (Emphasis supplied.)

The Commission made no finding in the instant case that the operations in question were interterminal in character. It found exactly to the contrary. The Commission made no finding that the development, coordination and preservation of an adequate "national transportation system" will be prejudiced if this Act does not apply. Without such a finding, the general conclusion that application of the Act is necessary in order to carry out the national transportation policy is without adequate support and therefore without effect.

The necessity for adequate findings as to jurisdictional facts has been well stated by this Court in the recent case of *City of Yonkers* v. *United States*, 320 U. S. 685, where it said:

> ". . . The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the federal and state domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears . . . (page 691)
>
> ". . . Where a federal agency is authorized to invoke an overriding federal power except in certain prescribed situations and then to leave the problem to traditional state control, the existence of federal authority to act should appear affirmatively and not rest on inference alone." (page 692)

To the same effect, see *Florida* v. *United States*, 282 U. S. 194. In the conclusions and findings in the instant case the Commission said (R. 849):

> "This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia Line and is the same in all essential characteristics as the transportation between residential areas of the District and commercial Government establishments in the District. . . . These installations represent to all intents and purposes an extension of the main business area of Washington."

Applying the standard which the Commission itself laid down in the *Charles Noeding Trucking Company* case to the facts of the instant case, as recited in the above quoted excerpt from the Commission's report, it becomes obvious that the national transportation policy has no possible connection with the bus operations here in question and that they are exempt, under Section 203(b) (8), from federal rate regulation.

(2) *There is no valid finding that the objectives of the national transportation policy can be attained only by federal regulation.*

But assuming that the Commission has made findings which establish that the purposes and aims of the national transportation policy are involved in this case, it still remains for the Commission to establish that *application of the Act* is necessary in order to effectuate that policy.

Section 203(b) (7a) does not authorize the Commission to remove carriers from the exemption of 203(b) (8) upon consideration of the reasonableness of the local rates, or because the national defense is involved. *It must also appear that those conditions can be cured only by the assumption of federal regulation.* The Section 203(b) (8) exemption applies "unless and to the extent that the Commission shall from time to time find that such application (of the Act) is *necessary* to carry out the national transportation policy declared in this Act . . ." (Section 203(b) (7a), emphasis supplied).

It is clear that the Commission's original report and order contained no finding of necessity—no finding that the national transportation policy can be achieved *only* by applying the Act to these carriers. The trial court put its finger squarely on this defect in the Commission's original order when it said: ". . . nor does it (the Commission) make any findings to support its general conclusion that its order 'is necessary' to carry out the national transportation policy . . ." (R. 917).

In the reopened proceedings, as during the original hearings, there was a complete lack of evidence as to whether, assuming the objectives of the national transportation policy to be involved, *application of the Act* was necessary to achieve those objectives. No testimony was offered and no findings were made showing that relief had been sought through the local regulatory agencies, the Public Utilities Commission and the Virginia Commission.

The only statement bearing upon this phase of the case was not a finding of fact at all, but a legal conclusion as follows:

> "No agency other than this Commission is empowered to regulate the fares in issue. It is a well-established rule that even where the Federal Government does not occupy the field, the States are without power to regulate charges for interstate transportation. Minnesota Rate Cases, 230 U. S. 352, 399-401, and cases cited there." (R. 819.)

The rule set forth in the Commission's report is applicable where the interstate transportation, sought to be regulated by a state, extends throughout the state or an important part thereof, and also in cases where the transportation is part of a connected system or network extending into large areas in other states. But this rule has no application to a case such as this where the transportation, although crossing a state line, is purely urban or local in character.

The applicable rule, where the transportation is local in nature, was announced by this Court in *Port Richmond Ferry Co.* v. *Board of Chosen Freeholders*, 234 U. S. 317. In that case, rates of fare for ferriage from New Jersey to New York, fixed by the Board under authority of a New Jersey statute, were sustained. The Court there said:

> "These (ferries) have always been regarded as instruments of local convenience, which, for the proper protection of the public, are subject to local regulation; and where the ferry is conducted over a boundary stream, each jurisdiction with respect to the ferriage from its shore has exercised this protective power . . . It is argued that the mere fact that interstate transportation is involved is sufficient to defeat the local regulation of rates, because, it is said, that it amounts to a regulation of interstate commerce. But this would not be deemed a sufficient ground for invalidating the local action without considering the nature of the regulation and the special subject to which it relates . . .

It is true that in the case of a given ferry between two states there might be a difference in the charge for ferriage from one side, as compared with that for ferriage from the other. But this does not alter the aspect of the subject. The question is still one with respect to a ferry, which necessarily implies transportation for a short distance, almost invariably between two points only, and unrelated to other transportation. It thus presents a situation essentially local, requiring regulation according to local conditions. . . . The practical advantages of having the matter dealt with by the states are obvious, and are illustrated by the practice of one hundred and twenty-five years. And in view of the character of the subject, we find no sound objection to its continuance. If Congress at any time undertakes to regulate such rates, its action will, of course, control." (234 U. S. 331-332)

The *Port Richmond* decision is in complete accord with principles governing State jurisdiction over interstate commerce, as first announced in 1851, in the *Pilotage Cases—Cooley* v. *Board of Wardens of Port of Philadelphia*, 12 How. 298, 319, and ever since adhered to by this Court. Those principles, as stated by the Court in the *Minnesota Rate Cases—Simpson* v. *Shepard*, 230 U. S. 352, 399, are as follows:

"The grant in the Constitution . . . established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation."

The regulation of ferry rates between New Jersey and New York was held not to be a matter requiring "a general system or uniformity of regulation," but rather a matter admitting of "diversity of treatment according to the special requirements of local conditions." Accordingly, there being no act of Congress providing such regulation, the Court in the *Port Richmond Ferry Company case* held that local authorities were free to regulate the fares for this interstate transportation.

The same principle was applied by this Court in *Pennsylvania Gas Co. v. Public Service Commission*, 252 U. S. 23, where it was held that the New York Commission had the power to regulate rates at which natural gas, transmitted directly from the source of supply in Pennsylvania, is sold, by the same company, to consumers in the cities and towns of New York.[19] See, also, *Lone Star Gas Co.* v. *Texas*, 304 U. S. 224, 238; and *Corporation Comm'n.* v. *Cannon Mfg. Co.*, (No. Car.) 116 S. E. 178.

Likewise, in *Public Utilities Com.* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, the Court, in holding that States may not regulate interstate wholesale rates for electric energy, implied that State regulation of local consumer rates would be valid, even though the electric energy was transmitted from a point beyond the State line.[20]

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[19] This case was later disapproved to the extent that it conflicted with the declaration in *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 472, wherein it was held that the sales of gas to consumers in that case constituted intrastate commerce, subject to state taxation. However, the principle announced in the *Pennsylvania Gas Co. case*, to the effect that service supplied across a state line does not preclude state regulation, was not designed to be disapproved. This is shown by the later citation of the *Pennsylvania Gas Co.* case in *Illinois Gas Co.* v. *Public Service Commission*, 314 U. S. 498, 505; in the dissenting opinion of Mr. Justice Roberts in *Jersey Central Co.* v. *Federal Power Commission*, 319 U. S. 61, 80; in the opinion of Mr. Justice Jackson in *Federal Power Comm'n.* v. *Hope Gas Co.*, 320 U. S. 591, 651, and in *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 124 F. 2d 800, 807.

[20] See, also, *Safe Harbor Water Power Corp.* v. *Federal Power Commission, supra.*

Similarly, this Court held, in *Eicholz* v. *Public Service Commission*, 306 U. S. 268, that the Missouri Commission had power to revoke a state permit to operate a motor carrier in Missouri on an interstate route going from St. Louis to Kansas City, Missouri, via Kansas City, Kansas. The Court there said (page 274):

> ". . . .We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected . . ."

In *Southwestern Bell Telephone Co.* v. *United States*, 45 F. Supp., 403, the court, in construing Section 221 (b) of the Federal Communications Act, assumed, but did not expressly hold, that telephone exchange service between Kansas City, Missouri, and Kansas City, Kansas, was subject to regulation by the respective commissions of Missouri and Kansas.

It thus appears that transportation, when of a local character, as by ferry boats, sales of electric energy or natural gas across state lines, local interstate motor truck operations and interstate exchange telephone service, has been held, either expressly or by implication, subject to local regulation.[21]

Acting upon the same principle, and in reliance upon these court decisions, Congress has several times expressly exempted certain types of interstate commerce of a local

[21] In recent years the Supreme Court has been giving increasing latitude to the States to regulate commerce and industry, where no express provision in federal statutes, or commission regulations thereunder, is found to the contrary, even though interstate commerce is thereby affected and burdened. See *California* v. *Thompson*, 313 U. S. 109; *Terminal Railroad Association of St. Louis* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1; *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261; and *Parker* v. *Brown*, 317 U. S. 341.

nature, from federal regulation. In doing so, Congress has not sought to create a hiatus in regulation by exempting from federal regulation a type of commerce which the States were constitutionally inhibited from regulating. Rather, Congress has established these exemptions in the clear expectation that the exempted commerce would and should be subject to state regulation. The Constitutional power of Congress to do this, and of the states to exercise the control thus made available to them was sustained in *James Clark Distilling Co.* v. *Western Maryland R. Co.*, 242 U. S. 311.

The most pertinent example of this is the Section 203 (b) (8) exemption in question in the instant case. Congress did not expect that the exemption of interstate motor carrier operations within municipalities or commercial zones would mean that they would escape regulation completely. The wording of Section 203 (b) (8) itself indicates that Congress intended the local authorities to supply this regulation. The debates in Congress, referred to at an earlier point in this brief, are indicative of this same understanding. To say that the states are without constitutional power to regulate this local interstate service, is to assert that Congress misconceived the decisions of this Court touching on important constitutional questions, or that Congress deliberately set out to create a void in the regulatory field.

Congress has made similar exemptions in other regulatory acts. In the Communications Act of 1934, wire communication between two points in the same state, although passing through a place outside thereof, is exempted from federal regulation "if such communication is regulated by a State Commission."[22] The same Act excepts telephone exchange service from federal regulation, even where such service extends across a state line "in any case where such matters are subject to regulation by a State commission or

[22] Section 3 (e), 47 U. S. C. 153 (e).

by local governmental authority."[23] It will be observed that these exceptions expressly contemplate state commission regulation, and in fact the exception is made to apply only where there is state commission regulation.

Similarly, in the Federal Power Act, enacted in 1935, Congress provided that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof . . ."[24] If the energy is returned to the state and consumed therein, it is not subject to federal regulation; *Re Chicago Dist. Elec. Generating Corp.*, 39 P. U. R. (N. S.) 263. The same Act excluded retail sales from Federal regulation, even though the electric energy may be imported from outside the state.[25] The Natural Gas Act, enacted in 1938, similarly limits federal regulation to sales at wholesale.[26]

The purpose of Congress in thus limiting the jurisdiction of the federal agency, in each of these cases, was, quite plainly, to leave the field of local service by these utilities, completely unoccupied by federal authority, so that the states might continue to regulate, even where interstate commerce might be involved. As explicitly stated in the report of the Committee of each House of Congress on the Natural Gas Act:

> "The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See Pennsylvania Gas Co. v. Public Service Commission (1920), 252 U. S. 23). There is no intention in enacting the present legislation to disturb the States in their exercise of

[23] Section 221 (b), 47 U. S. C. 221 (b).

[24] Section 201 (c), 16 U. S. C. 824 (c).

[25] Section 201 (d), 16 U. S. C. 824 (d).

[26] Section 1 (b), 15 U. S. C. 717 (b).

such jurisdiction." (House Report No. 709—75th Cong., 1st Session, Page 1, Senate Report No. 1162—75th Cong., 1st Session, Page 1).

In asserting that local authorities are without power to regulate the interstate rates for transportation within the Washington, D. C. Commercial Zone, the Commission relies upon a statement made by Mr. Justice Hughes in the *Minnesota Rate Cases, supra.* He there said:

> "They (the states) have no power . . . to prescribe the rates to be charged for transportation from one state to another . . ." (page 401).

That case, however, did not involve interstate commerce of a local character, such as that involved in the instant case. Nor did the cases cited by Mr. Justice Hughes, save one, involve transportation of a local character. Rather, they involved general transportation throughout the State or a large segment of the State, or transportation connected and interrelated with an extensive network or system of interstate transportation.

The sole exception is the *Covington Bridge Co. case,*[27] where the majority opinion held invalid a Kentucky statute reducing bridge tolls across the Ohio River into Ohio. In that case four justices, in a concurring opinion, based their concurrence upon the proposition that the bridge was built under a franchise given by concurrent acts of the two states, which authorized the Covington Bridge Company to fix tolls, and that this franchise could not be altered by one state without the consent of the other. But these four justices asserted that rates for transportation of a local character might be regulated by state laws, saying:

> "The several states have the power to establish and regulate ferries and bridges, and the rates of toll thereon, whether within one state, or between two adjoining states, subject to the paramount authority of Congress over interstate commerce." (154 U. S. 223).

[27] *Covington & Co. Bridge Co.* v. *Kentucky,* 154 U. S. 204.

Mr. Justice Hughes, who wrote the opinion in the *Minnesota Rate Cases* in 1912, also was the writer of the opinion in the *Port Richmond Ferry Co. case, supra,* which was decided in 1914. In the latter decision, the Court held, as we have seen, that ferriage is transportation of a local character, charges for which, although the same may be interstate, may be regulated by the state from which the ferriage begins, in the absence of federal regulation. In the *Port Richmond Ferry Co. case,* the court was confronted with the *Covington Bridge Co.* decision. Without expressly overruling that case, Mr. Justice Hughes so distinguished the same as to make it clear that the Court now approved the *Covington Bridge Co.* decision only by reason of the fact which had been made the basis for the action of the four concurring justices. The Hughes opinion, after acknowledging that the majority opinion in the *Covington Bridge Co. case* had held the state rate regulation violative of the commerce clause, said:

> ". . . It was pointed out, however, that the State of Kentucky, by the statute in question, attempted 'to reach out and secure for itself a right to prescribe a rate of toll applicable not only to persons crossing from Kentucky to Ohio, but from Ohio to Kentucky,'—a right which practically nullified 'the corresponding right of Ohio to fix tolls from her own state.' (Id. p. 220) *And this was an adequate basis for the judgment.* Four of the justices of the court, concurring in the judgment, announced their view that 'the several states have the power to establish and regulate ferries and bridges, and the rates of toll thereon, whether within one state, or between two adjoining states, subject to the paramount authority of Congress over interstate commerce.'" (Emphasis supplied) (234 U. S. 328-329)

The opinion in the *Port Richmond Ferry Co. case,* written by Mr. Justice Hughes, and handed down in 1914, necessarily modified the summary statement heretofore quoted from the *Minnesota Rate Cases* opinion, written by Mr.

Justice Hughes in 1912, to the effect that the states have "no power * * * to prescribe the rates to be charged for transportation from one state to another." It established an exception.

The authority for that statement, thus broadly made in the *Minnesota Rate Cases* opinion, was the *Covington Bridge Co. case,* and other cases, the language of which had been accepted as governing without reexamination.

The *Port Richmond Ferry Co. case* having thus overruled these earlier cases, insofar as they declared *all* interstate transportation beyond the reach of state regulation, and having established ferry transportation, at least, as an exception to the general rule stated in those cases, it must necessarily follow that whatever transportation across state lines is so far local in character that national regulation thereof is not required, and is not supplied by the Congress, is in fact subject to state regulation.

It therefore appears that the Commission was clearly in error in holding it to be a ". . . well established rule that even where the Federal Government does not occupy the field, the States are without power to regulate charges for interstate transportation . . ." There is no constitutional rule whereby the local authorities of Virginia and of the District of Columbia are prevented from regulating the bus and street railway fares in question under the principle established in the *Port Richmond Ferry Co. case.* The Commission reports are thus left with neither findings of fact nor sound legal conclusions establishing that attainment of the objectives of the national transportation policy can be achieved only by federal regulation. Without such findings the attempt to remove these carriers from the exemption of Section 203(b) (8) is abortive, for there is a total lack of the essential finding of necessity required by Section 203(b) (7a).

II.

The Commission failed and refused to refer the proceeding to a properly constituted joint board for a hearing and recommended report and order.

Section 205(a) of the Interstate Commerce Act reads in part as follows:

> "The Commission *shall*, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States . . . refer to a Joint Board for appropriate proceedings thereon, any of the following matters arising in the administration of this part with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: . . . complaints as to rates, fares, and charges of motor carriers . . . " (Emphasis supplied)

It is our contention that the instant proceeding is a "complaint" matter within the meaning of the above quoted statute.

It is true that the Commission order instituting the proceeding recites that "*It is ordered*, That an investigation be, and it is hereby instituted, into and concerning the reasonableness and lawfulness otherwise of the fares of respondents . . ." (R. 734). However, the case was initiated when the Secretary of War, with the concurrence of the Secretary of the Navy, on April 27, 1943, wrote to the Interstate Commerce Commission complaining that the fares charged by the Virginia Lines and the Transit Company for transportation service between the District of Columbia and Virginia installations were excessive.

That the Commission regarded the proceedings as in the nature of a complaint matter, even though termed an "investigation" in the original order, is indicated by the letter which Commissioner Patterson wrote to Colonel Barron under date of August 14, 1943, reading in part as follows:

> "Since this investigation was instituted at the request of the War Department, which alleged that the

existing fares were excessive, it is *'in the nature of a complaint'* and accordingly it is believed proper that the Department (War Department) should proceed first and introduce evidence that it may have tending to show the unreasonableness of the existing fares, of their unlawfulness otherwise, to be followed by other parties who have evidence of a similar nature, and then by respondents. This order of presentation of the evidence will, I believe, expedite the hearing of this case." (Emphasis supplied) (R. 10)

The presiding Commissioner, in referring to this letter, said:

"It was signed by me. That has been approved by the entire Commission." (R. 10)

The original hearing before the Commission was conducted, from beginning to end, as a complaint case. The War and Navy Departments were required to present their evidence first; the Commission made no investigation of its own and produced no evidence of its own; the Commission did not require the carriers to produce any evidence or make any showing except to the extent requested by the War and Navy Departments. At the rehearing the Commission put into the record a small amount of evidence relating to the certificate rights of the carriers.

The Commission certainly has power to initiate an investigation upon the basis of information contained in a complaint. As indicated above, if that was done here, it was done in name only. But even if done in fact, such action cannot be utilized to circumvent the express and mandatory provisions of Section 205(a). Congress has given the Commission no power to defeat the plain mandate of the statute by converting a complaint case into an investigation case. If the Commission desired to conduct a *bona fide* investigation, it could have done so in conjunction with the complaint proceeding, before the Joint Board. Section 205(a) specifically provides that the Commission may refer any investigation proceedings to a Joint Board. It can-

not avoid the Joint Board method of procedure by the simple device of calling this procedure an investigation, or even by instituting an actual, *bona fide* investigation.

It may be argued that the instant matter is not a "complaint" proceeding for the reason that the letter from the Secretary of War to the Commission which initiated the proceeding did not fulfill the requirement of the Commission's General Rules of Practice relating to the filing of "formal complaints" (Rules 26 to 34). However, the Commission's General Rules of Practice also provide for the filing of *informal* complaints.[28]

The Commission, on page 69 of its brief in the instant case, cites (footnote 25), *Cicardi Bros. Fruit & Produce Co. v. Atlantic C. L. R. Co.*, 227 I. C. C. 67, 69, as authority for the statement that the letter of the Secretary of War "did not even meet the requirements of an informal complaint such as prescribed in the Commission's General Rules of Practice." But examination of that Commission decision reveals that it is actually authority for the opposite conclusion, since the decision affirms a previous Commission decision which had held an informal complaint to be sufficient to toll the running of the statute of limitations. Moreover, there is more reason for requiring informal com-

[28] Rule 24. "*Informal Complaints Not Seeking Damages.*—(a) Form and content.—Informal complaint may be by letter or other writing, and will be serially numbered and filed as of the date of its receipt. No form of informal complaint is suggested, but in substance the letter or other writing (original only need be filed except as provided in rule 25 (d)) must contain the essential elements of a formal complaint as specified in rules 28 and 30. It may embrace supporting papers.

"(b) Correspondence handling.—If the informal complaint appears to be susceptible of informal adjustment, a copy or a statement of the substance thereof will be transmitted by the Commission to each person complained of in an endeavor to have it satisfied by correspondence and thus obviate the filing of a formal complaint.

"(c) Discontinuance without prejudice.—A proceeding thus instituted on the informal docket is without prejudice to complainant's right to file and prosecute a formal complaint, in which event the proceeding on the informal docket will be discontinued."

plaints to be set forth in considerable detail, where the matters involved are a series of freight shipments, at varying rates, over an extended period of time, and when reparations are sought, than in cases like the instant one, where the passenger rates and operations in question do not involve a complex set of facts. See, also, *Louisville & N. R. Co.* v. *Sloss-Sheffield Steel & Iron Co.*, 269 U. S. 217.

Congress made no distinction between *formal* and *informal* complaints. Section 205(a) does not restrict the mandatory reference of rate and fare matters to Joint Boards, to matters initiated by *formal* complaints. To interpret the statute as referring only to *formal* complaints is to read into the statute something which is not there. The Commission, after passage of the Act, adopted rules of practice dividing complaints into "formal" and "informal". It did so for legitimate purposes in connection with administration of the Act. But the Commission is without power, either by promulgation of rules or otherwise, to deny a hearing, or deny the type of hearing expressly provided by statute. Hence, it is without significance that the Commission's rules do not provide for hearings in the case of what it has called "informal" complaints. Where that rule runs counter to an express statutory provision for a particular kind of hearing of all complaint cases, it must necessarily give way.[29]

The pronouncement of the U. S. Supreme Court in *Palmer* v. *Massachusetts, supra*, amply supports the view that words and meanings not clearly expressed in statutes of this character should not be read into the statute by implication where the effect is to deprive state regulatory authorities of powers which Congress intended to leave in them.

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[29] Our contention does not mean that every complaint, no matter how informal or trivial, must go to a Joint Board hearing. The Commission's rules (Rule 24 (b)) appropriately provide for "informal adjustment." It would only be in those cases where such adjustment is not obtained that a reference to a Joint Board would be required, and then only in the comparatively narrow range of cases named in Section 205 (a).

If any liberties are to be taken in construing Section 205(a) they should be taken in the direction of upholding the mandatory features thereof. This is true for the reason that the entire Act displays a Congressional intent to preserve local authority to the fullest possible extent. The national transportation policy itself mandatorily requires the Commission to "cooperate with the several States and the duly authorized officials thereof."

The clear language of the above statute should not be taken lightly. The legislative history of this section plainly indicates that the requirement of reference to a Joint Board was a basic consideration in the mind of Congress. Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, made the following significant statement when the Act was in process of enactment (Cong. Rec., April 15, 1935, Vol. 79, Part 5, Page 5653):

> "*A basic principle of the bill* is that the regulatory bodies of the several States shall share in its administration because of their intimate knowledge of local conditions, their more direct contacts with the carriers subject to regulations, and the relation of such regulation to the use of the State's highways. To that end provision is made for the primary consideration of all important matters by joint boards composed of the representatives of the States wholly or chiefly concerned . . .
>
> "The bill contemplates submission of such matters to Joint Boards where the motor carrier operation involves not more than three States and the optional use of the Joint-Board procedure where a greater number is involved." (Emphasis supplied)

During the debates in the House, Congressman Crawford indicated how vital were the Joint Board provisions of the Act, when he said:

> "If it was not for the decentralizing provisions in this bill, I would not vote for it for that reason. This bill breaks down the Washington control and sets up local control where the interested parties may appear, at small expense and before those who know the local

conditions. This is a great redeeming feature of this bill." (Cong. Rec. July 31, 1935, Vol. 79, Part 11, Page 12224).

It may be argued that the failure to refer this proceeding to a Joint Board, if an error, was merely one of procedure and unimportant because the case was eventually heard and considered by the full Commission. In effect this is to argue that no reversible error would be involved in this court case if the proceeding were heard in the first instance by a United States Commissioner, then by a single District Judge, then by the Circuit Court of Appeals, and finally by the Supreme Court, because in the end it would be passed upon by the highest tribunal which it could have reached had it started in a Three-Judge Court as required by law.

Such an argument runs completely counter to the expressed intent and command of Congress. As noted above, the Joint Board features of the law represent "a basic principle" of the Act. By other provisions in the Act, Congress has been careful to leave no doubt about the mandatory nature of this reference procedure. In Section 17 of the Act, the Commission is "authorized" to organize itself into divisions and to set up boards of employees. It "may" refer matters, "*except matters required to be referred to Joint Boards by Section 305* (Section 205 of the Act)," to a division, a single Commissioner or a board. Thus Congress makes clear that the Commission *may not* refer to a division, a single Commissioner, or a board of employees, matters which Section 205(a) *require* to be referred to a Joint Board. Section 205(h) of the Act provides that "all provisions of Section 17 of Part I shall apply to all proceedings under this Part (Part II)."

The Commission derives all its powers from the statutes. It cannot disobey a positive Congressional demand with impunity. The failure to refer this proceeding to a Joint Board for hearing and recommended report and order is a fatal jurisdictional defect which renders the entire order void.

III.

The Commission order constitutes a regulation of intrastate commerce.

Fares of the Transit Company for its service in the District are 10 cents, three tokens for 25 cents or a weekly pass which is sold for $1.25 (R. 838). The weekly pass is good for transportation over any and all lines of the Transit Company within the District during the week of issuance. The Commission order requires that this same pass be made applicable to interstate transportation over the Transit Company's lines, to and from the Pentagon from and to any point in the District. On this the Commission's original report provides:

> "We further find that the bus fares and the bus-streetcar fares of the Capital Transit Company in issue are unreasonable in those instances where, and to the extent that, they exceed the fares now maintained within the District of Columbia, which latter fares, including all transfer privileges, we find to be reasonable for application to and from the Pentagon building and intermediate points . . ." (R. 850).

The action of the Commission in setting an interstate fare exactly the same as an intrastate fare for a lesser distance over part of the same route has the appearance of being unreasonable and arbitrary.[30] But when, as here, the Commission order goes further, and provides that interstate

[30] The Commission took this action on the theory that the Virginia installations were really a part of the downtown business district of the District of Columbia, and hence should be within the same fare zone. The Commission order recites:

> "We are unable to accept respondents' contention that a proper demarcation line for the application of the District fares is the political boundary between the District and Virginia . . ." (R. 848).
>
> "We do not think that extension of the District fare zone should be denied because of overlapping jurisdiction with the District commission and resultant regulatory difficulties . . ." (R. 850).

passengers must be afforded an opportunity to buy a weekly pass which may also be used for unlimited intrastate transportation, there is involved a direct violation of the statutory prohibition against Commission regulation of intrastate commerce.

The Commission has not contented itself with telling the Transit Company that it must sell a $1.25 weekly pass, good for interstate transportation between the District and the Pentagon. Had the Commission intended the weekly pass to be good only for transportation to and from the Pentagon, it would not have set the price at $1.25. Under the Commission order any person can, by purchasing tokens, obtain six round trips between the District and the Pentagon for $1.00, and seven round trips for $1.16⅔. Such a person would not buy a $1.25 weekly pass unless he intended to us that pass for trips wholly within the District as well as for trips to and from his employment at the Pentagon.

What the Commission has really done is to say to the Transit Company: "You must sell interstate passengers a $1.25 weekly pass which they may also use evenings and week-ends for unlimited intrastate transportation within the District of Columbia." It is clear that this is a direct and specific regulation of intrastate fares. What fares are reasonable and lawful for intrastate transportation within the District is for the Public Utility Commission to decide. This is true whether that transportation is being used by persons whose place of employment is within the District, or by erstwhile interstate passengers who are employed at the Pentagon.

The fact that the Commission order applies only to persons who also buy interstate transportation is immaterial. That a person may be an interstate passenger on Saturday affords no basis for Commission jurisdiction over his intrastate journeys on Saturday night or Sunday. A state commission would have no power to require a carrier to transport, in interstate commerce, at a fixed rate or free, holders

of intrastate weekly passes. Likewise the Commission has no such power respecting intrastate commerce.

The fact that the price set by the Commission for weekly passes is the same as the price authorized by the Public Utilities Commission is also immaterial. Actually the weekly pass prescribed by the Commission is not the same price, but cheaper, in view of the fact that the holder thereof is entitled to more transportation (including interstate transportation) than ordinary pass holders. But, in any event, the coincidence of price parity does not vest the Commission with jurisdiction expressly withheld by statute. If the Commission has jurisdiction to fix any intrastate rate it has jurisdiction to fix an intrastate rate which is lower or higher than existing intrastate rates. And if the Commission has no jurisdiction to fix intrastate rates, it cannot acquire such jurisdiction by adopting the existing intrastate level.

That the Commission is wholly without power to enter an order in any way regulating intrastate rates and fares of motor carriers, is shown by the following explicit provisions of the Act:

> "Nothing in this part (Part II) shall be construed to . . . interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof." (Section 202(b))
>
> ". . . *Provided, however*, That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever." (Section 216(e))

The Commission itself has recognized the plain meaning of these statutory provisions. In *New England Motor Carrier Rates*, 9 M. C. C. 737, 738, the Commission said:

> ". . . Under Section 216(e) of the Motor Carrier Act, 1935, we are without authority to prescribe, or, in any

manner regulate, rates for intrastate transportation to remove discriminations against interstate commerce or for any other purpose . . ."

In *Tucker* v. *Casualty Reciprocal Exchange*, 40 F. Supp. 383, 385, the Court quoted Section 202(b) as support for the statement that:

". . . The Motor Carrier Act of 1935 is not only a case where Congress does not assume to occupy the entire and exclusive field of transportation by motor carriers, but on the contrary evidences by explicit language an express intention to leave intrastate commerce by motor carriers to the control of the several States . . ."

We are deeply concerned to find that the Commission has, in this proceeding, sought to regulate intrastate commerce in the manner described above. The Court will judicially notice the fact that hundreds of motor carriers engaging in interstate commerce, subject to Commission jurisdiction, also engage in intrastate commerce. If the Commission is at liberty, in any case, to require an interstate carrier to make particular intrastate rates or service available to that carrier's interstate passengers or shippers, then the door is open for almost unlimited Federal encroachment in the field of intrastate motor carrier regulation. Such a course is diametrically contrary to the plain and expressed intention of Congress. It is a new and startling doctrine which should be rejected by this Court at the threshold.

IV.

The interstate individual and joint fares prescribed in the Commission order are unreasonably preferential, unjustly discriminatory and unduly prejudicial to particular persons, localities, and descriptions of traffic in Virginia.

Section 216 (d) of the Act reads in part as follows:

"It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasou-

able preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic, to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . ."

The Commission in *Washington, D. C. Commercial Zone supra*, described the Washington, D. C. Commercial Zone in which the operations of motor carriers were made exempt from federal jurisdiction with respect to rate or fare regulation. This zone includes the District of Columbia and points in nearby Maryland and Arlington County and Alexandria, Va.[31]

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[31] "We find that the zone adjacent to and commercially a part of Washington and contiguous municipalities, in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt under section 203 (b) (8) from regulation, is as follows:

District of Columbia
Garrett Park, Md.
Kensington, Md.

That part of Montgomery County, Md. east of a line extending northward from the Potomac River to the intersection of Conduit Road and Seven Locks Road, and thence northward along Seven Locks Road to the intersection with Weaver Road; and south of a line extending eastward along Weaver Road from the intersection with Seven Locks Road to Orndorf Mill Road, thence eastward along Orndorf Mill Road to Old Georgetown Road, thence southeastward along old Georgetown Road to Grosvenor Lane, thence eastward along Grosvenor Lane to U. S. Highway 240, thence northward along U. S. Highway 240 to Garrett Park Road, thence southeastward along Garrett Park Road to Wheaton Road, thence northeastward along Wheaton Road to old Bladensburg Road, thence southeastward along old Bladensburg Road to the Montgomery County-Prince George's County line.

Chillum, Riverdale, Hyattsville, Bladensburg, Seat Pleasant, and Spaulding districts, Prince George's County, Md.
Alexandria, Va.
Arlington County, Va." (3 M. C. C. 243, 246-247)

The operations of the carriers here involved are in or near the center of this exempt zone and extend a short distance across the Potomac River to Virginia installations in Arlington County, Va. The Virginia Lines operate in Arlington County and Alexandria, Va., and between Arlington County and Alexandria and the District of Columbia. They operate wholly within the exempt area, the only exception being that the Alexandria Line operates a service to and from Fort Belvoir, Va.

The Commission prescribed an 8⅓ cent token fare for service on the Virginia Lines between the District and the Virginia installations. At the same time, residents of Virginia located no farther from the District than these installations, and who are employed within the District of Columbia, are required under the present fare structure (which has not been altered by the Commission order), to pay a minimum fare of 10 cents for transportation by the same carriers in the same vehicles for the same or less distances.

Further, the Commission order prescribes a 13⅓ cent commutation fare for through service over the Transit Company and the Virginia Lines and from any place within the District to the Virginia installations. At the same time Virginia residents who are located within the exempt zone area no farther from the District than said installations, are required to pay under the present fare structure of the Virginia Lines and the Transit Company (which fare structure the Commission has not altered), a minimum fare of 18⅓ cents (10 cents cash fare on the Virginia lines, plus 8⅓ cents token fare on the Capital Transit Company lines) for transportation by the same carriers in the same vehicles for the same or less distances. And it should not be overlooked that all of these operations are within the Commercial zone as defined by the Commission.

It is, therefore, obvious that if the Commission's order is permitted to become effective the Virginia residents, who are employed in government installations in the District of Columbia, just as are District residents employed in the

government installations in nearby Virginia, will have to pay from 1⅔ cents to 5 cents higher fares for transportation by the same carriers for the same or less distances, in the same vehicles, than the District residents will have to pay. This creates an unjust discrimination and undue prejudice against the Virginia residents and localities, in violation of Section 216(d) of the Act, hereinabove referred to.

It is clear that the residents in Virginia traveling in the same vehicles and for the same or lesser distances in the same zone should be required to pay no higher level of fares than the District residents pay in traveling between the District and the government installations in nearby Virginia. If there had been testimony presented in the case to justify these differences in the fares paid by the Virginia residents and the District residents, and the Commission had made findings of fact to support these differences and to sustain the lower level of fares which it has prescribed for the District residents, then we could not successfully contend that the fares prescribed by the Commission are unjustly discriminatory and unduly prejudicial against the Virginia residents and localities in violation of Section 216(d) of the Act. But the record contains no evidence to support a prescription by the Commission of a lower fare for government employees residing in the District who work at the Virginia installations, than for government employees residing in Virginia who travel to government installations in the District, or to the government installations in Virginia.

In addition to being discrimination against other interstate commerce as described above, such a discriminatory and prejudicial situation referred to is a burden on intrastate commerce in Virginia in that the Virginia residents using these Virginia bus lines would be required to make up the deficiency in the revenue created by the reduction of the fares which the Commission has ordered for the benefit of the residents of the District who travel to and

from government installations in nearby Virginia. The failure of the Commission to give consideration to the needs of intrastate commerce in Virginia in entering its order in this proceeding is in conflict with the principle enunciated by this Court in *Colorado* v. *United States*, 271 U. S. 153, where the Court at page 168 of its decision stated:

> "... The sole test prescribed is that abandonment be consistent with public necessity and convenience. In determining whether it is, the Commission must have regard to the needs of both intrastate and interstate commerce. For it was a purpose of Transportation Act of 1920, to establish and maintain adequate service for both...."

This matter was called to the Commission's attention during the hearing and argument and on brief, namely, that if the Commission were to prescribe the lower fares sought by the War and Navy Departments between the District and nearby Virginia installations, the other fares in the same zone would be on a higher basis. In response to that contention the Commission merely found that it would only consider the particular fares complained about in the Secretary of War's letter dated April 27, 1943.[32]

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[32] "Such territory in Virginia as would be added to the present District base zone and the territory in the District now included in the 10-cent base zones of the Virginia Lines, would, with respect to the transportation embraced in this proceeding, be subtracted from those zones of those lines. *No change would be made in the present fare zones of the Virginia Lines in respect of service between Virginia residential areas and the Virginia offices.*" (Emphasis supplied) (R. 847)

"The Virginia Lines are concerned not only about the direct effect of a reduction in the fares here considered, but also about the support that such action would afford for an attack upon other fares, *particularly those from and to residential areas in Virginia to and from the District and the Virginia installations.*" (Emphasis supplied) (R. 848)

* * * *

"We are unable to accord much weight to apprehensions of respondents that if the District base zone is extended, demands will be made for a similar extension between the District and other

The Commission closed its eyes as to the other fares on the same lines in the same zone, even though it considered this proceeding an "investigation."[33] The definition given by Webster of the word investigate is "to follow up or make research by patient inquiry and observation and examination of facts." The very purpose of an "investigation" is to remove inequalities in rates or fares in a given area. An investigation by the Commission enlarges the Commission's burden in ascertaining *all* the facts and charges it with the duty of exercising special caution in that respect. For example, in Ex Parte No. MC-9, *In re Filing of Contracts by Contract Carriers by Motor Vehicle*, 20 M. C. C. 8, at page 18 the Commission said:

> "Investigations on our own motion are contemplated by the act and have long been our practice, particularly where *extensive territories, large groups of carriers, or other issues of general interest are involved.* The magnitude of such investigations, including the present, *only enlarges our burden in ascertaining all the facts and charges us with the duty of exercising special caution in that respect.*" (Emphasis supplied)

The Commission, treating the instant proceeding as an investigation is, therefore, under the duty to investigate all the facts respecting all the interstate fares of these Virginia Lines in the Washington, D. C. Commercial Zone. The fare structure at the present time in the area here in-

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points in the vicinity. Each case that comes before us must be decided on its own merits and upon the particular circumstances shown to exist. In the event of a formal proceeding involving other fares, it will be our duty to inquire carefully into the circumstances, but of those circumstances we are not informed on this record. The decision herein must be predicated also upon the facts and circumstances at present known." (R. 848, 849)

[33] The Commission considered this proceeding an "investigation" over our protest. It is our contention that the proceeding is in reality in the nature of a "complaint" case and that if the Commission has jurisdiction, the case should have been referred to a Joint Board for hearing. See Chapter II of this brief which deals with the question of Joint Board procedure.

volved is reasonably uniform and the result of the Commission's order herein, if allowed to become effective, will be to bring about lack of uniformity and inequality in the fare structure, the very opposite result that is contemplated by an "investigation" by the Commission under the Act.

Even if it be assumed that the present fare structure voluntarily maintained by the carriers involved is lacking in uniformity and, therefore, discriminatory and prejudicial, the fares here prescribed by the Commission in no wise improve this situation. At the Commission hearing counsel for the War Department asked one of his witnesses whether an equalizing of the fares would not tend to lessen the load on the Transit Company buses. He used this language:

> "Major Ristroph, is it your opinion that if the discrimination in fares was removed so that there was a uniform fare between these installations and the District that the effect of removal of such differences would be to reduce the necessity for the same number of buses to carry the peak hour traffic?" (R. 541)

The same differential that existed in the fare structure at the time counsel asked Major Ristroph this question is perpetuated by the Commission's order herein. In this connection it should not be overlooked that the Regional Committee of the Office of Defense Transportation proposed to eliminate that differential, and the Transit Company and the Virginia Lines agreed. But the War and Navy Departments refused to accept this proposal of the Regional Committee (R. 19). In any event, the Commission has no power to *order* the perpetuation of an unreasonably discriminatory and unduly prejudicial fare or rate structure.

Furthermore, it is a cardinal rule of rate making that in fixing a given rate or fare the Commission should consider the rates or fares applicable in the same or contiguous territories. The Commission has often expressed its recognition of this principle. For example, in the *Lake Cargo Coal*

se, 139 I. C. C. 367, 386, the Commission said in inter-eting the Interstate Commerce Act:

> " . . . it requires that rates shall not only be reasonable *per se*, but just and reasonable in their relation to other rates on like traffic in the same territory that afford a proper standard of comparison . . . "

See also the Commission's decision in *Fares Between rgen County, N. J. and New York, N. Y.*, 6 M. C. C. 25. page 34 of its decision in that case the Commission had e following to say respecting the inequality of fares be-een the carriers operating in the same territory:

> "The evidence is convincing that maintenance of lower fares by some respondents than by others, to and from the same points, on account of slight differences in distance traveled would create a *chaotic* condition. The carrier having the lower fare would get the traffic, forcing down the fares of the other carriers, regardless of the revenue effect." (Emphasis supplied)

d at page 35 of its report the Commission further stated:

> "There are, however, other tests which may be applied in determining the reasonableness of a rate or fare, *such as comparison with other rates or fares applicable in the same general territory.*" (Emphasis supplied)

The Commission did not follow this well known and es-olished principle in the instant proceeding. The fares tween other points in the same area via the same lines re brought to the Commission's attention in the instant oceeding and the Commission gave little or no considera-n to the point made.

It is our contention that it was the Commission's duty this proceeding to investigate and determine the facts specting fares applicable via the same lines in the same ea or zone in reaching its decision. By failing to give nsideration to these other fares the Commission refused

to consider one of the most important known factors of rate making. The Commission could not reach an intelligent conclusion without considering these other fares and, therefore, its order is arbitrary and invalid. In any event, the Commission certainly was informed on the record that the fares which the Virginia residents will have to continue to pay for the same or lesser distances than here involved, via the same lines, will be on a substantially higher level than those prescribed from the District to the government installations in Virginia.

We view these variances in fares as a plain case of unreasonable preference, unjust discrimination and undue prejudice to Virginia residents and localities. The Commission order makes no finding of fact, and the record contains no evidence which would support the prescribing of a lesser fare for government employees residing in the District and working at the Pentagon Building than for government employees residing in Virginia and working at government buildings in the District, particularly where the distances involved and the carriers used are the same.

Such unjust discrimination against Virginia residents and localities is not only a violation of Section 216(d) of the Act quoted above, but in our opinion, it amounts to an arbitrary and capricious ruling on the part of the Commission. Certainly the Virginia residents should not be compelled to subsidize these Virginia bus lines for the special benefit of District residents who travel to and from the Virginia installations. The fares of these lines in this commercial zone should be reasonably uniform and free from unjust discrimination and undue prejudice. The Commission's order is, therefore, void in that it is clearly in violation of Section 216(d) of the Act.

V.

The Commission does not have jurisdiction over the street railway system of the Transit Company.

The Commission order under review purports to prescribe fares and joint fares applicable for transportation on the Transit Company's street railway system in the District of Columbia.

In *Omaha & C. B. Street R. Co.* v. *Inters. Com. Com.*, 230 U. S. 324, this Court held that street electric railways engaged in interstate passenger transportation were not comprehended within the meaning of the word "railroad" as used in Section 1 of the Act, and were therefore not subject to Commission jurisdiction. It would seem that the decision in the *Omaha* case would definitely bar any attempt at Commission regulation of the fares of the Transit Company. However, the Commission has advanced three reasons why it believes it has jurisdiction over this Company, namely: (a) The Transit Company is an interurban line and therefore subject to regulation under the court decision in *United States* v. *Village of Hubbard*, 266 U. S. 474; (b) Enactments subsequent to the Commission order under review in the *Omaha* case, brought street railroads under the rate jurisdiction of the Commission; and (c) In any event the street railroad operations of the Transit Company are subject to Commission regulation because of their co-mingling with motor carrier operations by the same company. These contentions are considered separately below.

(a) The Transit Company is not an interurban electric railroad.

In *United States* v. *Village of Hubbard, supra*, the Court held that an interurban electric railway line approximately 14.5 miles in length, operating between the cities of Youngstown, Ohio, and Sharon, Pennsylvania, passing through the village of Hubbard, Ohio, is a "railroad" within the mean-

ing of the Act, and hence subject to general Commission regulation.[34] In that case, the Court drew a distinction between interurban lines, and street railways which had been held, in the *Omaha* case, not to be "railroads" within the meaning of the Act.

In its original report herein (R. 841), the Commission cites the *Village of Hubbard* decision as authority for Commission regulation of the Transit Company. In so doing, the Commission held, in effect, that the Transit Company is an interurban electric railway.[35]

The Transit Company's street car system is confined almost entirely to the city limits of the District of Columbia. Within the District the street cars operate on public streets and stop from block to block for the purpose of receiving and discharging passengers. Three of the company's street car lines, however, extend into Maryland (R. 162, 164).

The contention that the Transit Company is an interurban electric railway cannot possibly be based upon that company's electric railway operations within the District of Columbia. The word "interurban" itself denotes a con-

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[34] The distances from Youngstown and Sharon to Hubbard are 8.75 miles and 7.18 miles, respectively. The Commission had found that the company operating that line "maintains a regular interurban passenger service every half hour between Youngstown and Sharon." *Ohio Rates, Fares and Charges*, 64 I. C. C. 493, 494.

[35] In its brief filed in the Court below the Commission said (page 22): ". . . it is clear that the Commission concluded that the Transit Company's electric operations (so far as consisting of the travel to and from the Virginia installations and also Maryland) were interurban . . ." On page 20 of its brief to the Court below, the Commission said: "Down to this point it is plain that the Commission is pointing out that while under the *Omaha case* it is without authority over street electric railways, under the later case (*Village of Hubbard* case) it has authority over interurban roads even though not engaged in transportation of freight . . . it is manifest that it is the Commission's view that, if that part of the company's operations which are electric is to be considered separate (from bus operations), such part is plainly interurban operation within the *Village of Hubbard case, supra*. . . ." (We are uncertain whether the Commission continues to take this position in its brief filed with this Court.)

nection *between* cities, not *within* a city.[36] It is a pure contradiction in terms to characterize a street car line, performing *intra* urban service, as an "interurban" line. It is plain, also, that the same line cannot be both interurban and urban, even for the purposes of the Act, for the Act itself has drawn a distinction between these terms.[37]

The Transit Company's street car operations within the District fall squarely within the category of street railways defined in the *Omaha* case and there exempted from Commission jurisdiction. In that case the Court drew a clear distinction between electric lines which were "interurban" and those which were not. There the Court said, at page 336:

> "... Street railroads transport passengers from street to street, from ward to ward, from city to suburbs ...
>
> "But it is said that since 1887, when the Act was passed, a new type of interurban railroad has been developed which, with electricity as a motive power, uses larger cars, and runs through the country from town to town, enabling the carrier to haul passengers, freight, express, and the mail for long distances at high speed. We are not here dealing with such a case, but with a company chartered as a street railroad, doing a street railroad business and hauling no freight. ..."[38]

But it may be contended that the Transit Company is an "interurban electric railway," subject to regulation under the *Village of Hubbard* case, because it has electric railway lines extending into Maryland and serving several suburban and rural areas. The fares applicable to this suburban

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[36] "Interurban—going between, or connecting, cities or towns; as, interurban electric railways." (Webster's New International Dictionary, 2nd Ed. Unabridged.)

[37] In section 1 (22), the words "street, suburban, or interurban electric railways" are used. The same differentiation is made in section 20a (1).

[38] See also, the dissenting opinion of Commissioner Patterson, 256 I. C. C. 769, 787 (R. 854).

and rural service are established on a zone basis (R. 840).

The Commission order now under review, prescribing fares and joint fares for transportation on Transit Company street cars were not made applicable to the zone street car service extending into Maryland, but solely to street car service within the District (R. 851). Hence in determining whether the Commission has jurisdiction over the Transit Company street car system, the character of operations beyond the District line, where zone fares are applicable, is wholly immaterial.

But assuming that the character of the street railway service extending into Maryland is material, the Commission has itself held that the predecessor to the Transit Company was a "street railway system" within the meaning of the *Omaha* case, and therefore not subject to Commission jurisdiction. *Depreciation Charges of W. Ry. & E. Co.*, 85 I. C. C. 126, decided in 1923. When that case was decided the Washington Railway & Electric Company, predecessor of the Transit Company, had street car service both within and beyond the District coextensive with the present street car service. In addition, it had street car lines, long since abandoned, extending to Rockville, Maryland, a distance of about 11 miles from the District line; and in another direction, to Laurel, Maryland, a distance of about 14 miles. Yet the Commission, after reviewing the *Omaha* decision, said (85 I. C. C. 126, 129):

> "The facts in the *Omaha case* are similar to those in the present case. The Washington Railway & Electric Company, together with its subsidiaries, operates a 'local' street railway system which hauls no freight and transports passengers principally 'from street to street' within the City of Washington. As an incident to its street-railway business, it conducts a passenger suburban service into Maryland. We believe this transportation system falls within the class of street railways excluded from the act under the decision in the *Omaha case*. . . ."

Needless to say, there has been no change in the facts or circumstances since 1923 which would warrant the Commission in changing its determination then made, that the predecessor of the Transit Company was a "street railway" exempt from Commission regulation. The only substantial change which has taken place since that time has been in the abandonment of the two long street car lines extending to Rockville and Laurel, Maryland. There is thus a much stronger case now for holding this company to be a "street railway" than there was 22 years ago. The Commission has several times said that its "previous decisions relating to the status of the same carrier under a similar exemption provision should not be lightly departed from in the absence of changed conditions . . ." *Salt Lake & U. R. Co.*, 214 I. C. C. 717, 721; *Sacramento N. Ry.*, 208 I. C. C. 203; *Waterloo C. F. & N. Ry.*, 208 I. C. C. 211.

(b) Enactments subsequent to the Omaha case did not bring street railroads under the rate jurisdiction of the Commission.

In its brief to the Court below the Commission contended that even though the Transit Company is a "street railway", and therefore exempt under the Act as it stood when the *Omaha* case was decided, amendments to the Act enacted since then have brought all street railways, and hence this Company, under the Commission's general jurisdiction.

In making this contention the Commission does not assert that Congress enacted any amendments specifically adding street railways to the list of carriers subject to Commission regulation. But it is said that in 1910 and 1920 Congress enacted certain statutes enlarging the jurisdiction of the Commission in certain other respects, but providing that the enlarged powers shall not apply to electric street railways or interurbans.[39] From this the Commission reasons

[39] The Act of June 18, 1910, chap. 209, 36 Stat. L. 539, 551, 552, amended section 15(3) of the Act to give the Commission enlarged powers respecting the establishment of through routes and joint

that the specific exception of street railways from the application of these new statutes indicates that Congress understood street railways to be included under the general jurisdiction of the Commission.

To support this reasoning the Commission relies on the *Village of Hubbard case, supra.* In that case, in holding interurban lines subject to Commission jurisdiction, these 1910 and 1920 amendments excepting street railways and interurbans were referred to by the Court as indicating

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fares, and provided that "The Commission shall not, however, establish any through route . . . between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character . . ." The other amendments were contained in the Transportation Act, 1920, chap. 91, 41 Stat. L. 456, as follows: Section 422, 41 Stat. L. 488, introduced new section 15a into the Act, dealing with the determination of a fair return, but excluding "(b) street or suburban electric railways unless operated as a part of a general steam railroad system of transportation, (c) interurban electric railways unless operated as a part of a general steam railroad system of transportation or engaged in the general transportation of freight . . ." Section 402, amending section 1 of the Act to give the Commission jurisdiction over extensions and abandonments of lines, excludes, by section 1(22), 41 Stat. L. 478, "street, suburban or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation." Section 439, which inserts new section 20a into the Act, concerning the issue of securities, excludes, by paragraph 1, 41 Stat. L. 494, "a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation." Section 204, 41 Stat. L. 460, relating to reimbursement to railroads for deficits during Federal control, excludes "any street or suburban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic." Section 209, concerning the guaranty to carriers after the termination of Federal control, excludes, by paragraph (a), 41 Stat. L. 464, "a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power." Section 300, which deals with the Labor Board, excludes by paragraph 1, 41 Stat. L. 469, "a street, interurban, or suburban electric railway not operating as part of a general steam railroad system of transportation."

"that Congress did not intend to deny to the Commission the power to regulate interurban railways in other respects." (266 U. S. 474, 480.)

It is a rule of statutory construction that where the Congress uses broad sweeping language in an act and at a later point in that act expressly excludes certain subjects for *specific purposes*, Congress intended those subjects to be included within the broad language for general purposes.[40] But it is plain that this rule has no application to a case like the instant one, where street railways were held by the Court to be excluded under the terms of the original Act and Congress thereafter specifically excluded them from subsequently enacted provisions enlarging Commission jurisdiction.[41] In such a case, the specific exclusion is nothing more than a device to make sure that street railways, *already excluded from existing provisions of the Act*, are *also* excluded under the new provisions enlarging the Commission's authority in certain respects.

While Congress might have relied on the *Omaha case*, it chose, out of an abundance of caution, to make express exceptions in these new provisions. This did not operate to vest the Commission with *general* jurisdiction over the same carriers—that would be exactly contrary to what Congress desired. Street railways, having been excluded, by the *Omaha* decision, from the general provisions of the Act, could be brought under general jurisdiction *only* by *specific* provision therefor.

When Congress desired to bring new classes of companies under Commission jurisdiction it knew how to accomplish this—it made specific provision for the inclusion of such

[40] Lewis' Sutherland Statutory Construction (2nd ed.) Vol. II, pages 670-672.

[41] When Congress amends or amplifies a general regulatory statute it must be deemed to have known the construction which the courts had placed on the original statutory language. *Cornell Steamboat Co.* v. *U. S.*, 53 F. Supp. 349, 355, affirmed, 321 U. S. 634.

new classes.[42] It did so by specific language expressly including the new classes of carriers. After the *Omaha* decision by the United States Supreme Court, Congress was certainly called upon to state in express terms its intention to include "street railways" under the general provisions of the Act, if it had any intention to include them.

The Court in the *Village of Hubbard* case applied the rule of statutory construction upon which the Commission relies. But in that case there was not involved any prior Court decision, such as the *Omaha case*, to throw light on the Congressional intent. The *Village of Hubbard* decision, moreover, draws a clear distinction between interurban lines and street railways and, although referring to the *Omaha case*, does not disapprove or overrule that case, but tacitly approves it.

Up until the instant case the Commission itself has uniformly distinguished between street railways and interurbans and, relying on the *Omaha case*, has consistently held street railways to be excluded from Commission jurisdiction. Since 1915, interurban electric roads have been required to file with the Commission annual reports of their finances and operations. *Jurisdiction over Urban Electric Lines*, 33 I. C. C. 536. But although that decision came down after the 1910 amendments were effective, it continued to recognize the *Omaha case* as the law, and excluded street railways from the annual report requirements. 33 I. C. C. 536, 539.

In *Depreciation Charges of W. Ry. & E. Co., supra*, the Commission held the predecessor of the Transit Company to be a "street railway." This decision, which quoted with approval the *Omaha case*, was decided in 1923, after the

[42] Express companies, sleeping car companies and pipe line companies were made subject to Commission jurisdiction under the Act of June 29, 1906, 34 Stat. L. 584, Section 1, amending sections 1(1) and (3) of the Interstate Commerce Act. Telegraph, telephone and cable companies were made subject to Commission jurisdiction under the Act of June 18, 1910, 36 Stat. L. 544, Section 7, amending section 1(1) of the Interstate Commerce Act.

1920 amendments were fully effective. In the *Village of Hubbard case, supra,* which was decided in 1925, the Court said, at page 478:

> ". . . the distinction suggested in Omaha & C. B. Street R. Co. v. Interstate Commerce Commission, 230 U. S. 324 . . . , between interurban railroads and urban or suburban street railways, has been carefully observed (by the Commission)."

It is a settled rule of construction that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration or enforcement is entitled to the highest respect, and, though not controlling, if acted upon for a number of years, will not be disturbed except for very cogent and persuasive reasons.[43]

In *United States* v. *Chicago, N. S. & M. R. Co.*, 288 U. S. 1, the Interstate Commerce Commission, after for years assenting in its annual reports that it did not have jurisdiction over any interurban electric railways, insofar as security regulation under section 20a was concerned, abruptly claimed such jurisdiction over the Chicago, N. S. & M. R. Co., operating between Chicago and Milwaukee. In upholding a District Court decision reversing the Commission, the United States Supreme Court, after calling attention to this long standing record of administrative interpretation, said (page 13):

> "With this knowledge of the situation the Commission never, until it requested the Attorney General to institute the present suit, by word or act intimated that the procedure followed by the railroad was illegal or the state regulatory bodies without jurisdiction. It would be difficult indeed to conceive a clearer case of uniform administrative construction of section 20a as applied to this company. Conceding that the proper classification of the railway is not free from difficulty, all doubt is removed by the application of the rule that

[43] See exhaustive annotation in 73 Law Edition, 322, supplemented in 84 Law Edition, 28.

settled administrative construction is entitled to great weight and should not be overturned except for cogent reasons. (citing cases)

"The primary responsibility rested upon the Commission to determine whether under the circumstances the railroad was required to procure leave under section 20a for the issuance of securities. Evidently entertaining serious doubts on this question it has for more than a decade resolved them in favor of the carrier, and the company and its officers have acted in reliance on the administrative tribunal's construction of the statute. At this late day the courts ought not to uphold an application of the law contradictory to this settled administrative interpretation."

The above quoted language by this Court is precisely in point in the instant case. For 35 years the Commission has uniformly held electric street railways to be excluded from its jurisdiction. In 1923 it officially determined, after hearing, that the predecessor to the Transit Company was a street railway not subject to Commission regulation. The Commission has not, up to the time of deciding the instant case, sought to regulate the street railway operations of the Transit Company, or its predecessors, or of any other company whatsoever, in any respect. If there is any ambiguity in the statute relative to Commission jurisdiction over street railways, the Commission has resolved that ambiguity through its uniform administrative interpretation of the Act over a long period of years. As this Court said in *United States v. Chicago, N. S. & M. R. Co., supra*, "at this late day the courts ought not to uphold an application of the law contradictory to this settled administrative interpretation."

(c) THE CO-MINGLING OF STREET CAR AND BUS OPERATIONS HAS NOT VESTED THE COMMISSION WITH JURISDICTION OVER THE STREET CAR OPERATIONS.

The Commission apparently did not have much confidence in its ruling that electric street railways are now subject to general Commission jurisdiction. So it made a ruling, in the alternative, to the effect that the Transit Company's street car operations had become so "co-mingled" with its bus operations, that regulation of the latter requires regulation of the former (R. 842). In support of this doctrine, the Commission says:

> "The situation is analogous to the relation between intrastate and interstate railroad traffic, concerning which the Supreme Court in *Wisconsin Railroad Commision* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, said at page 588:
>
> > 'Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct both.'"

The Court will take judicial note of the fact that in the District of Columbia and in all large metropolitan areas, urban transportation systems which, a few years ago, were exclusively street car systems, are now supplemented by bus operations. In most cities, including the District of Columbia, the street car system is still the dominant means of transportation. While the buses and street cars of the Transit Company travel about equal mileage, the street cars produce 62 percent of the revenue (R. 842). While there is certainly no "co-mingling" in the sense used in the *Wisconsin Railroad* case, there is unavoidably a certain amount of integration between the street car and bus operation. Because of this integration between the dominant means of transportation, street cars, and the supplemental newcomer, buses, the Commission proposes to let the tail wag the dog, and to secure jurisdiction of the street car opera-

tion by reason of its claimed authority over the bus operation.

At the outset, this novel theory is objectionable for the same reason that the asserted jurisdiction over street railways is objectionable—it is contrary to the Commission's administrative interpretation of the Act over a long period of time. The Commission first obtained jurisdiction over motor carriers in 1935.[44] But in the ten years that have transpired since then, this is the first time the Commission has asserted jurisdiction over street railways under the Motor Carrier Act (or any other Act).

If this theory is sustained in the present case there will not be a street car system in the nation which will not come fully under Commission jurisdiction, save in cases where such system has no supplemental bus lines extending across state lines and except where the commercial zone exemption of section 203(b) (8) can be said to apply. As Commissioner Patterson said in his dissenting opinion:

> "The action here taken by the majority will constitute a precedent for the assumption, under similar circumstances, of jurisdiction to regulate local and joint fares in connection with street-railway lines serving municipalities throughout the country." (R. 855.)[45]

The Wisconsin Railroad Commission case, *supra*, relied upon by the Commission is wholly inapposite to the circumstances of this case. In that case there was no question of jurisdiction over the carrier or over a segment of the carrier's line. Here that is the sole question. In the *Wisconsin case* there was a co-mingling of two types of commerce in the same cars operating on the same rails. There is no such co-mingling in the instant case.

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[44] The Motor Carrier Act was approved August 9, 1935, and became Part II of the Interstate Commerce Act. Under the Transportation Act of 1940, approved September 18, 1940, the designation of Part II by the short title "Motor Carrier Act, 1935" for citation purposes, was amended out.

[45] Commissioner Patterson, who was Chairman of the Commission at the time, presided at the original hearing.

The Court's language in the *Wisconsin case*, relied upon by the Commission, was used to support the statement which immediately preceded, "that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce, and necessary to its efficiency" (257 U. S. 563, 588). The prescription of fares applicable on the Transit Company's street car lines is not "incidental" to the regulation of bus fares. The Commission, had it desired to do so, (assuming its action to be valid in all other respects) could have prescribed fares applicable on the buses but not on the street cars. It did not do this because the result would have been a gross discrimination between passengers riding vehicles subject to Commission jurisdiction and passengers riding vehicles not subject to the Commission's jurisdiction. So the Commission solved the problem by reaching out and assuming jurisdiction over a type of carrier which Congress had not placed under the Commission's authority.

The Commission, in its brief to this Court in the instant case (page 82) cites and quotes *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, as authority for the statement that the co-mingling of the street railway with the motor carrier operations of the Transit Company makes that street railway operation subject to Commission jurisdiction. But it will be noted that the Court quotation relied upon opens with these words: "The Commission having jurisdiction over the carriers *and the facilities* by which the transportation is carried on, the question is narrowed to whether its jurisdiction extends to the entire current of commerce flowing through this terminal although intrastate in part . . ." (Emphasis supplied). In the instant case, the Commission does *not* have jurisdiction over the Transit Company's street railway "facilities," and therefore *United States* v. *N. Y. Cent. R. R., supra*, is no authority for concluding that such jurisdiction can be acquired by reason of any co-mingling which may have taken place.

The Commission obtains its authority to regulate bus fares under section 216 of the Act. Section 216(a) provides that it shall be the duty of every "common carrier of passengers by *motor vehicle*" to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges. (Emphasis supplied.) The term "motor vehicle," as defined in section 203(a) (13) of the Act, expressly excludes "any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service." The words "any . . . car operated exclusively on a rail or rails" certainly includes street cars. This is doubly certain when it is noted that the kind of trolley buses excluded from the Act are those "furnishing local passenger transportation similar to street railway service." Here is a clear indication of the Congressional intent that Part II of the Act shall not apply to street railway service or to trolley buses furnishing transportation "similar to street railway service." In the face of that express statutory exemption, there is no warrant for the exercise of jurisdiction over street railways, under Part II, whether by the application of reasoning claimed to be analogous to the *Shreveport* principle, or by any other reasoning.[46]

[46] In analogous situations the Commission has uniformly recognized that co-mingling or other interrelation between a carrier subject to a specific kind of regulation and a carrier not subject thereto does not justify the Commission in extending such regulation to the latter carrier. Thus, in *Monon Transportation Corp., Common Carrier Registration Appli.*, No. MC-28800, decided by Division 5 on February 13, 1945, it was held that, since Section 206(a) of the Act, exempting carriers operating solely within a state, from certificate regulation, relates only to motor carriers, a motor carrier operating within a single state does not lose its exemption privilege merely because it is a subsidiary of a railroad which operates in more than one state. See, also, *Service Transportation Company Contracts, et al.*, No. MC-C-265, decided by Division 2 on March 5, 1945, where it was held that the exception to Section 203(b)(8), in the case of carriers under a common control, management or arrangement for a continuous carriage to or from a

The Commission, as a body of limited jurisdiction, must nd statutory authority for its action. *N. Y. Cent. Secur. orp.* v. *U. S.*, 287 U. S. 12. This is doubly true where a onflict with state jurisdiction is involved. As this Court aid in *Palmer* v. *Massachusetts, supra:*

> ". . . in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress. . . . "

This Court aptly summarized the correct view in *Pennylvania R. Co.* v. *Public Utilities Commission*, 298 U. S. 70, when it said, in rejecting a contention that private carage should be taken into consideration in determining hether railroad transportation, partly by private carrier nd partly by common carrier, is subject to Commission egulation under the Act:

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be."

The attempted inroad upon state and local control of treet railway lines, implicit in the order under review, unupported by express statutory authority and founded upon new and far-reaching doctrine of implied power, should be ejected by this Court as it has rejected similar attempts n the past.

Conclusion.

The five principal points discussed herein are those most irectly affecting the interests of the Virginia Commission nd state regulatory commissions generally. In addition o these five points, the Commission order is illegal and void

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oint without the commercial zone, was not applicable to a case here the "common . . . arrangement" was with a private carier, since private carriers are not subject to general Commission egulation under Part II of the Act.

for several other reasons, namely: (1) The Commission has no power to prescribe joint fares between motor carriers and street railway systems; (2) the Commission has exceeded its authority by requiring motor carriers to establish commutation fares; and (3) the order is not supported by substantial evidence.

These additional points are fully argued in the briefs of other appellees herein. We concur in such argument.

The judgment below should be affirmed.

Respectfully submitted on behalf of the State Corporation Commission of the State of Virginia, appellee, and the National Association of Railroad and Utilities Commissioners, *amicus curiae*,

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Attorney for said Association.

April 16, 1945.

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CHARLES ELMORE CROPLEY,

No. 663

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL., *Appellees*.

On Appeal from the District Court of the United States for the District of Columbia.

BRIEF FOR AMICUS CURIAE, PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinions of the District Court of the United States for the District of Columbia (R. 913, 919) are reported in 55 F. S. 51 and 56 F. S. 670.

The first report of the Interstate Commerce Commission is reported at 256 I. C. C. 769 (R. 835), and the supplemental report in 258 I. C. C. 559 (R. 813).

PRELIMINARY STATEMENT

The Public Utilities Commission of the District of Columbia offers this brief as an *amicus curiae* because its powers are directly affected by the orders issued by the Interstate Commerce Commission in this proceeding. This *amicus curiae* believes that the orders constitute an invasion of its exclusive jurisdiction to fix rates and charges on street railways and buses performing intrastate transportation within the District of Columbia. It believes that the action of the Interstate Commerce Commission in this proceeding constitutes an unauthorized invasion of local regulatory authority, which both Congress and this Court have carefully undertaken to preserve.

SUMMARY OF ARGUMENT

The Interstate Commerce Commission has asserted and attempted to exert a power to regulate street railway fares and local bus fares in the District of Columbia contrary to the express prohibition in the proviso of Section 216(e) of Part II of the Interstate Commerce Act. That proviso was incorporated for the express purpose of prohibiting federal regulation of intrastate transportation under authority of the Shreveport doctrine. Congress denied the Commission authority to prescribe, or in any manner regulate, charges for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce, or for any other purpose whatever. The Commission has attempted an unwarranted and unauthorized inroad upon local authority, and for that reason its order is void.

Not only is the Commission's order without authority of law, but it is also in conflict with specific provisions of the Act, as well

as the national transportation policy declared by Congress. Its action constitutes an invasion of the domain of state power. It has asserted jurisdiction over two motor carriers which are excepted from its jurisdiction under the strict letter of Section 203(b)(8), and over two other carriers that are excepted from its jurisdiction under the spirit of that section. It has erroneously treated four separate and independent carriers as constituting a general system of transportation requiring joint rates, contrary to its powers.

ARGUMENT

The Interstate Commerce Commission Has No Authority to Regulate Street Railway Fares or Local Bus Fares.

In its first report, *Passenger Fares between District of Columbia and Nearby Virginia* (256 I. C. C. 769, R. 835), the Interstate Commerce Commission said a question was raised as to its authority to prescribe through routes and joint fares between points served by the urban bus lines of the Capital Transit Company and the Virginia lines, and expressed the opinion that it had such authority under the provisions of Section 216(e) of the Act (49 U. S. C. A. § 316(e)). At page 770 of its report the Commission said the Capital Transit Company "furnishes regular urban and suburban streetcar and bus service for the transportation of passengers in the District and nearby Maryland, and bus service between the District and the Pentagon". The Commission said the Company's bus and streetcar operations are "commingled and blended" (p. 775). After describing the operations of the Capital Transit Company, the Commission expressed the opinion that in view of the circumstances described—

> "effective exercise of the authority expressly conferred upon us to regulate the bus fares necessarily involves some regulation of the Transit Company's streetcar fares, insofar as they apply to the transportation considered." (P. 775, R. 842.)

It accordingly held that it has

> "jurisdiction to require the application of the fares herein found reasonable to the combined bus-streetcar operations of the Transit Company and to those operations and bus operations of the Virginia Lines." (P. 775, R. 842.)

The Public Utilities Commission of the District of Columbia believes that this attempted exercise of jurisdiction to control and fix fares over the combined bus and streetcar operations of the Transit Company constitutes the most important issue before the Court. The District Commission believes that the jurisdiction asserted and attempted to be exercised is contrary to express provisions of the Motor Carrier Act, and constitutes an unauthorized invasion by a federal agency of local and state regulatory authority.

The Federal Commission reaches its conclusion of jurisdiction by referring to Sections 15(3) (49 U. S. C. A. § 15 (3)) of Part I and 307(d) (49 U. S. C. A. § 907 (d)) of Part III of the Act. Section 15(3) authorizes the Commission to establish through routes, joint classifications, joint rates, divisions of rates and operating conditions of *railroads;* but the section contains this denial of authority:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character; * * *"

Section 307(d) of Part III is a similar provision in reference to *water carriers*, and it likewise expressly denies the Commission authority over street railways in the following language:

> "The Commission shall not, however, establish any through route, classification, or practice, or any rate,

fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water."

After referring to the denials of authority in Sections 15(3) and 307(d), the Commission then cites Section 216(e) of Part II (49 U. S. C. A. § 316(e)) and says there is no similar limitation in it. This statement completely ignores the proviso in Section 216(e) and the reasons for its inclusion, which was expressly inserted in the original bill by amendment of the House Committee on Interstate and Foreign Commerce, as shown by its Report No. 1645, 74th Congress, First Session. The proviso reads as follows:

> "*Provided*, however, That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

At page 4 of its report, the House committee gave the following reasons for its incorporation of the proviso in Section 216(e):

> "An amendment has been made by the committee which prohibits the extension of Federal regulation in intrastate transportation as exercised under authority of the decision of the Supreme Court in the *Shreveport case* and of the provisions of section 13(4) of the Interstate Commerce Act."

"When the legislative purpose is so plain", the Commission "cannot assume to do that which Congress has refused to do." *Southern S. S. Co.* v. *National Labor Relations Board*, 316 U. S. 31, 44. When Congress said that nothing in this part shall empower the Commission to regulate the rate, fare or

charge for intrastate transportation, it is difficult to believe that Congress meant that it "shall have power to regulate the rate, fare or charge for intrastate transportation". *Connecticut Light and Power Co.* v. *Federal Power Commission*, No. 189, October Term, 1944 (decided March 26, 1945).

Because the exception in Section 216(e) does not in its denial of authority include the precise words "street electric passenger railways" as do Sections 15(3) and 307(d), the Commission has reached the strained construction that Congress has conferred upon it the power to regulate rates and fares on street electric passenger railways. This is assertion of a power that Congress has always denied to the Interstate Commerce Commission. The Commission's construction is not only contrary to the ordinary rules of statutory construction but also to the long-established and well-recognized administrative law that an agency of Congress or of the Legislature has only such powers as have been expressly delegated to it. Administrative agencies may not exert a power not expressly delegated to them. They do not derive powers or jurisdiction by implication.

If there could be any doubt about the Commission's authority to regulate street railway fares or local bus fares under Section 216(e), it is removed by the statement from the report of the House Committee on Interstate and Foreign Commerce referred to hereinabove.

"The Interstate Commerce Commission is without jurisdiction over intrastate rates except to protect and make effective some regulation of interstate commerce." *Illinois Commerce Commission* v. *Thomson*, 318 U. S. 675, 684. But this authority under the Motor Carrier Act was expressly prohibited by the proviso in Section 216(e). The power asserted by the Commission in this proceeding is directly contrary to the express prohibition contained in that proviso.

Contrary to the construction arrived at by the Interstate Commerce Commission, the proviso in Section 216(e) is even broader than the prohibitions in Sections 15(3) and 307(d).

In the two sections last mentioned the only denial was as to "street electric passenger railways", while in Section 216(e) Congress went even further and denied the Commission authority to prescribe "or in any manner regulate" fares or charges "for intrastate transportation" or for any service connected therewith for the purpose of removing discrimination against interstate commerce or "for any other purpose whatever." It would be difficult to employ more definitive language denying the Commission the authority to regulate or control fares over the bus and street railway system in the District of Columbia.

The Commission, by its unusual and strained construction of Section 216(e), found that the effective exercise of its authority to regulate bus fares from Constitution Avenue to Pentagon, which produces "less than 2 percent" of all revenues, necessarily involves regulation of streetcar fares of the Transit Company. It accordingly held that it had jurisdiction to require the application of fares found by it to be reasonable to the combined bus-streetcar operations of the Transit Company. This construction is in direct conflict with the specific purpose stated by the House committee for the inclusion of the proviso in Section 216(e).

"Construction may not be substituted for legislation." *U. S. v. Missouri Pacific Railroad Co.*, 278 U. S. 269, 278. The Commission may not by a far-fetched and forced construction reach a result contrary to the prohibition in Section 216(e). *W. U. Telegraph Co. v. Lenroot*, No. 49, October Term, 1944, 65 S. Ct. 335.

The Shreveport doctrine (*Houston & Texas Ry. v. U. S.*, 234 U. S. 342, 351) was established under the authority of Part I of the Interstate Commerce Act. Under that doctrine the Interstate Commerce Commission has authority to regulate intrastate rates when they are found to discriminate against, or to cast a direct burden upon, interstate commerce transported by railroads. But that doctrine has never been applied to fares of street electric passenger railways not en-

gaged in the business of transporting freight. The Interstate Commerce Commission attempted on November 27, 1909, to regulate the intrastate passenger fares of the Omaha Street Railway. The Omaha Company was not authorized by its charter to haul freight, but was limited to carrying passengers only. Temporary injunction was granted, and on appeal, this Court held that the Act did not confer jurisdiction upon the Commission to regulate fares of street electric passenger railways not engaged in transporting freight, and made the injunction permanent. *Omaha Street Ry.* v. *Interstate Commerce Commission*, 230 U. S. 324.

After the Commission had promulgated its order in the *Omaha Street Railway* case, Congress, on June 18, 1910, amended the Interstate Commerce Act, and prohibited the Commission from regulating fares of street electric passenger railways not engaged in the business of transporting freight. That prohibition is found in Section 15(3) of the Act (49 U. S. C. A. § 15 (3)). Since that time the Commission has not undertaken to regulate fares on street railway lines until it issued its order in this proceeding. The Capital Transit Company, like the Omaha Street Railway, is chartered only for the purpose of engaging in transportation of passengers by street railway or bus. It has no charter right to transport freight.

At page 774 of its report (R. 841) the Commission referred to the *Omaha Street Railway* case, and to *U. S.* v. *Village of Hubbard*, 266 U. S. 474. The Commission says that the *Village of Hubbard* case is authority for its jurisdiction to regulate "interurban electric railroads" engaged in interstate passenger operations. In that case the Commission issued an order raising intrastate interurban passenger fares. As this Court there said, the Commission

> "granted the relief under the rule of *The Shreveport Case*, 234 U. S. 342, and *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563."

which rule is specifically denied the Commission by the proviso in Section 216(e). The *Village of Hubbard* case does not support the Commission's exertion of a power in the instant proceeding. In that case the company involved was an "interurban electric railroad", not a street electric passenger railway. The *Village of Hubbard* case is not applicable in the instant proceeding, first, because the Commission is denied the right to regulate fares on street railways, as decided by the Court in the *Omaha Street Railway* case, and for the further reason that Section 216(e) of the Motor Carrier Act specifically prohibits its regulation of fares of local buses or streetcars.

When Congress wrote Part II (The Motor Carrier Act, 49 U. S. C. A. § 301, *et seq.*), it took particular caution to prevent the application of the Shreveport doctrine and the provisions of other parts of the Act requiring through routes and joint fares to common carriers by motor vehicles. In presenting the bill, with the amendments recommended by the Committee on Interstate Commerce, Senator Wheeler, chairman of the committee, stated that Section 216(a) (49 U. S. C. A. § 316(a)) as amended by the committee is confined to common carriers of passengers by *motor vehicle*. He said:

> "In the original bill there was a provision for *mandatory* through routes and joint rates between all motor common carriers and carriers by rail, express, and water. There was substantially unanimous disapproval of this provision." (79 Congressional Record, Part 5, p. 5655.) (Italics supplied.)

Senator Wheeler explained that if this mandatory provision remained in the bill, small operators feared it would give preference to railroads and—

> "Hence paragraphs (b) and (c) have been introduced by the committee in order to make joint through routes and rates *permissive* between motor carriers of property and between motor carriers of passengers

or property and other agencies of transportation." (79 Congressional Record, Part 5, p. 5655.) (Italics supplied.)

Section 216(c) (49 U. S. C. A. § 316 (c)) reads in part as follows:

> "(c) Common carriers of property by motor vehicle *may* establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle *may* establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water." (Italics supplied.)

After providing that common carriers by motor vehicle *may voluntarily* establish through routes and joint rates with other kinds of agencies, the section then provides in sub-paragraph (e) the remedy where such rates, charges, classifications, etc., are found to be in violation of the section or Section 217, but Congress wrote into Section 216(e) the exception to the Shreveport doctrine in the language above quoted. The sole reason for the inclusion of this proviso is to exclude from the jurisdiction of the Commission the right to regulate intrastate transportation by *any method whatever* under the authority of the Motor Carrier Act. Not only does the exclusion of "intrastate transportation" from its authority deny the Commission the right under Part II to regulate street electric passenger railways, but intrastate transportation *by any other method*, whether it be by bus or by street railway or both. The denial of authority in Section 216(e) was purposely made stronger and broader than the prohibitions in Sections 15(3) and 307(d). This conclusion is evidenced not only by the broad language of the proviso, but it is also shown by the committee report stating the specific purpose of the proviso.

In *New England Motor Carrier Rates*, 9 M. C. C. 737, the Commission itself recognized the lack of authority which it here asserts when at page 738 it said:

> "Under Section 216(e) of the Motor Carrier Act, 1935, we are without authority to prescribe, or in any manner regulate, rates for intrastate transportation, to remove discriminations against interstate commerce or for any other purpose."

In discussing the basic principles of regulation of motor carriers as prescribed in the bill, the House committee in its Report No. 1645, *supra*, pointed out the various motor carriers exempt under the bill, and named trolley buses similar to street railway service and buses used in zones commercially a part of a municipality when such transportation is under common control for continuous carriage or shipment. The Commission's own report shows that Pentagon is located within the municipal zone of Washington as defined by it at 3 M. C. C. 243. It stated (256 I. C. C. at page 782) that the transportation here involved—

> "is the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. * * * These installations represent to all intents and purposes an extension of the main business area of Washington." (R. 849.)

These findings by the Commission make it abundantly clear that the transportation over which it has attempted to exert a control is essentially local and municipal transportation which Congress by both Sections 203(b)(8) (49 U. S. C. A. § 303(b)) and 216(e) evidenced a clear intent to retain under local regula

Section 13(4) (49 U. S. C. A. § 13(4)), referred to in the quotation from the House report, authorized the Interstate Commerce Commission to remove any preference or prejudice or discrimination in intrastate commerce against interstate commerce moved by *railroad*. It is significant that there is no such language in the Motor Carrier Act; but on the contrary, Congress in mandatory language told the Interstate Commerce Commission that it had no such authority under the Motor Carrier Act. Could Congress have used more positive language in denying to the federal agency the power it has asserted and has attempted to exercise?

There is abundant evidence, both in the Motor Carrier Act, as well as in the history of the legislation, that Congress did not intend an invasion of local or state control and regulation of transportation by motor vehicles. Senator Wheeler said the legislation "has the endorsement of practically all the State commissions throughout the country." (79 Congressional Record, Part 5, p. 5650.) It is hardly conceivable that practically all the state commissions throughout the country would support legislation that invaded state regulation of local transportation. It is inconceivable to think that the state regulatory bodies would have approved or advocated such legislation, if they had believed that the federal agency would assert a power or attempt to exercise such power over streetcar and bus fares in a municipality.

One piece of evidence on the part of Congress that conflict with local and state regulation was not intended is shown by the policy set forth originally in Section 202(a) of the Act as passed (49 U. S. C. A. § 302 (a)) and in the national transportation policy as it is defined in Section 1, Title I, of the Transportation Act of 1940 (54 Stat. 899), amendatory of both Parts I and II of the Interstate Commerce Act. Both in the original Act, as well as the amended Act, the policy of Congress and the national transportation policy defined by it is "to cooperate with the several States and the duly authorized officials thereof".

Senator Wheeler said (79 Congressional Record, Part 5, p. 5653):

> "A basic principle of the bill is that the regulatory bodies of the several States shall share in its administration because of their intimate knowledge of local conditions, their more direct contacts with the carriers subject to regulation, and the relation of such regulation to the use of the State's highways. To that end provision is made for the primary consideration of all important matters by joint boards composed of the representatives of the States wholly or chiefly concerned."

He further stated that it was the judgment of Coordinator Eastman (who drafted the original bill) and of the Commission that if the various state commissions could meet on these matters, it would have a salutary effect upon the whole situation, and that the states will not feel that the Government is trying to usurp all the authorities of the state governments (p. 5653).

If the Commission has authority to regulate bus and streetcar fares, directly or indirectly, in the District of Columbia and to compel Capital Transit Company to establish through routes and joint fares with the Virginia companies here involved, it has authority to compel it to establish through routes and joint fares with every other interstate motor carrier coming into the District of Columbia. If it has the authority it has attempted to exert in this proceeding, it has authority to require Capital Transit Company to establish joint fares with the Greyhound Bus Lines coming into the District of Columbia. Such operation would not come under the exception of Section 203(b)(8), because the Greyhound Lines go far beyond the municipal zone. Such an undertaking would also be free from the mandatary provision of Section 305(a) (49 U. S. C. A. § 305(a)), because the operation would involve more than three states. To answer that the Commission has not undertaken such exertion of power does not

settle the question of its power. If it has the power in the instant case, it has it in the other.

Then, if the Commission has the power attempted to be exercised here, it would have the same authority at the terminal of the Greyhound Lines in New York or Cleveland, or elsewhere, and it could with equal validity require joint fares with the local bus and street railway lines in those cities. One is as illogical as the other.

In its declaration of the national transportation policy, Congress clearly demonstrated its purpose that the Motor Carrier Act be administered in full cooperation with the several states and their duly authorized officials. Not only was this made clear in the national transportation policy, but Congress went a step further and authorized the creation of joint boards composed of representatives of states, and required certain matters arising under the Motor Carrier Act to be referred to such boards.

Not until the Motor Carrier Act was passed in 1935 did Congress lay down such a strong declaration of policy to cooperate with the states in the administration of federal laws. In no other part of the Interstate Commerce Act dealing with transportation by railroads (Part I, 49 U. S. C. A. § 1, *et seq.*), transportation by water carriers (Part III, 49 U. S. C. A. § 901, *et seq.*) and with freight forwarders (Part IV, 49 U. S. C. A. § 1001, *et seq.*) has Congress demonstrated to the same degree its desire to avoid conflict or occasions for conflict between federal agencies and state authority as it did in the Motor Carrier Act.

If there be doubt as to the applicability of the Motor Carrier Act to the local bus and street railway operations of the Capital Transit Company, that doubt must be resolved so as to deny jurisdiction to the federal agency. In *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 351, this Court said that when, in order to protect interstate commerce, Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. In the proviso

n Section 216(e) Congress conveyed its purpose just as xplicitly in telling the Interstate Commerce Commission that t may not regulate bus or street railway fares even for the urpose of removing discrimination against interstate com- nerce. In spite of the congressional purpose declared in the ational transportation policy to avoid conflict or occasions or conflict with state authority, and the specific mandate that he federal agency may not regulate local transportation, the Commission has in this proceeding for the first time under- aken to assert and exercise a control and regulation of muni- ipal bus and street railway fares. The Commission may not gnore the prohibition in Section 216(e) and find in that or ther sections of the Act "radiations beyond the obvious mean- ng of language unless otherwise the purpose of the Act would e defeated." *Bunte Bros., supra.*

The admonition given by the Court in the *Bunte Bros.* case s most appropriate here when it said:

> "An inroad upon local conditions and local standards of such far-reaching import as is involved here, ought to await a clearer mandate from Congress." (P. 355.)

n *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 152, this Court said, "Where Congress has not clearly indicated a pur- ose to precipitate conflict, we should be reluctant to do so by ecision." In the instant proceeding Congress has clearly ndicated a purpose not to precipitate conflict. Congress emonstrated its consciousness of the "existence and force and unction of established institutions of local government" in he enactment of the proviso in Section 216(e), the exception f Section 203(b)(8) and Section 205(a). It is an appropriate ime, as this Court said in the *Davies Warehouse* case, to heed he maxim reiterated in *City of Yonkers* v. *U. S.*, 320 U. S. 85, 690, that "the extension of federal control into these tradi- ional local domains is a 'delicate exercise of legislative policy n achieving a wise accommodation between the needs of

central control and the lively maintenance of local institutions.'" This Court has spoken to like effect in *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, 498; *Palmer* v. *Commonwealth of Mass.*, 308 U. S. 79, 84; *Parker* v. *Brown*, 317 U. S. 341, 351; *State of Florida* v. *U. S.*, 282 U. S. 194, 211-212. In the foregoing decisions this Court has said that evidence of federal authority should appear affirmatively and not rest on inference alone. Not only is there a lack of affirmative power, but on the contrary, there is specific prohibition against the authority sought to be asserted by the federal agency in the instant proceeding.

The orders constitute exertion of power not possessed by the Commission and not intended by Congress, and for that reason they are void. *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 444; *U. S.* v. *Missouri Pacific Railroad Co.*, 278 U. S. 269.

The Order Under Attack Does Not Constitute an Application of the National Transportation Policy Defined in the Act.

In the original report the Commission found that two companies were not engaged in intrastate transportation over their entire operations and that two others, while engaged in intrastate operation in both jurisdictions and subject to control by the two regulatory bodies, were performing restricted transportation in the District, and for those reasons the Commission assumed jurisdiction. It bolstered this assumption of jurisdiction by the statement that:

> "In any event, we are of the opinion and find that application of the act to that transportation is, in the language of section 203(b)(7a), necessary to carry out the national transportation policy." (R. 843.)

The statement in respect to the necessity for carrying out the national transportation policy was without evidence.

Under no theory can the national transportation policy as defined in the Transportation Act of 1940 be used by the federal agency for an invasion of local and state rights. A contrary purpose is disclosed in the declaration by Congress as to what the national transportation policy is. One of the basic elements of that policy is "to cooperate with the several States and the duly authorized officials thereof."

That the element of cooperation with the several states and their duly authorized officials was considered by the Congress as an important one is evidenced by the exemption of Section 203(b)(8), as well as the sections providing for the creation of joint boards composed of representatives of the states to administer the Motor Carrier Act, and the provisions prohibiting the application of the Shreveport doctrine. Other evidence of the importance of this basic element in the national transportation policy is found in congressional committee reports on the legislation, references to which have been made in other portions of this brief, as well as by statements of members of Congress in debating the proposed legislation.

For instance, Senator Wheeler said (79 Congressional Record, Part 5, p. 5650):

> "Furthermore, an exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between contiguous municipalities or commercial zones, * * *."

The proceeding before the Commission was not instituted by it either on its own initiative or on complaint that the Motor Carrier Act "cannot be made to work" without the exercise of federal jurisdiction over municipal and commercial zone transportation. The Motor Carrier Act has been made to work successfully from its enactment without complaint of a breakdown of enforcement of the law.

The national transportation policy laid down by Congress was not needed, nor was it intended, to confer jurisdiction.

The national transportation policy does not grant jurisdiction. *Mississippi Valley Barge Line Co.* v. *U. S.*, 292 U. S. 282, 288. The policy is merely a guide in the administration of the powers expressly granted to the Commission. *McLean Trucking Co.* v. *U. S.*, 321 U. S. 67, 82.

Another very strong piece of evidence of the importance of this feature of the national transportation policy is found in the proviso in Section 216(e), where Congress specifically provided that the Motor Carrier Act shall not empower the Interstate Commerce Commission to prescribe, or in any manner regulate, intrastate rates, or any service connected with intrastate transportation, to remove discrimination against interstate commerce, or for any other purpose whatever. On page 5 herein will be found a quotation from House Report No. 1645, explaining that this proviso was written into the bill by the House committee to prohibit the extension of federal regulation in intrastate transportation under the Shreveport doctrine, or the provisions of Section 13(4) of the Act.

The foregoing facts indicate that the policy of cooperating with the states and their officials, even where the federal agency has authority, is just as important, if not more important, than the policy of encouraging reasonable charges for transportation service without unjust discriminations, undue preferences, or advantages. Indeed, the proviso in Section 216(e) indicates that the policy of encouraging reasonable charges without unjust discriminations is of less importance than that of conflicting with local and state authority, because that provision will not permit interference with such local authority, even for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

The Commission has stated no sound reason for invoking the national transportation policy to exert a federal power which Congress intended to leave to local and state regulation. The Commission has not named the element of the national transportation policy upon which it relies to exert the attempted

power. It may not disregard the exemption in Section 203(b)(8) and the prohibition in Section 216(e). The Commission has not been commissioned to effect the policy of the Act so that "it may wholly ignore other and equally important Congressional objectives." *Southern S. S. Co.* v. *National Labor Relations Board, supra,* at page 47. A policy declaration by Congress is relevant and entitled to respect as a guide in resolving any ambiguity or indefiniteness, if any, in the specific provisions which purport to carry out its intent. It cannot be wholly ignored. The declared purpose might also be looked for in specific denials of power to the Commission, such as that found in the proviso in Section 216(e). *Connecticut Light and Power Co.* v. *Federal Power Commission, supra.*

The national transportation policy declared by Congress is "all to the end of developing, coordinating, and preserving a national transportation system * * * adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." The operations of the four companies described by the Commission (R. 837) and the Commission's conclusions and findings that the transportation involved is urban and "the same in all essential characteristics as the transportation between residential areas of the District and commercial and Government establishments in the District", and represents to all intents and purposes "an extension of the main business area of Washington" (R. 849), show clearly that the four companies involved are not parts of a "national transportation system". The Commission's findings show that the transportation is a part of the municipal area of Washington. It is intra-terminal transportation in the District of Columbia, not inter-terminal. If the Virginia installations "represent to all intents and purposes an extension of the main business area of Washington" (R. 849), the transportation is intra-District transportation, which the Commission may not regulate for any purpose whatever. The attempt to exert regulation over the local bus and street railway opera-

tions of Capital Transit Company is contrary to the policy declared by Congress and is specifically denied the Commission by the proviso in Section 216(e).

Not only is there an absence of finding that the transportation involved is part of the national transportation system, but on the contrary, the evidence and the Commission's findings show that it is not. The evidence clearly shows that the four companies are entirely independent operating companies, neither having any connection with the other or with any other transportation agency. The Commission's findings and description of their operations show they are not related and are not parts of a transportation system.

The national transportation policy does not contemplate "urban" mass transportation "between residential areas of the District and commercial and Government establishments in the District". If Congress had intended the regulation of urban transportation between residential areas and commercial establishments within a municipality to be its declared policy, it would have found apt words to say so. If it had intended that regulation of local bus and street railway transportation constituted part of the national transportation policy, Congress would not have enacted the proviso in Section 216(e). If Congress had intended that regulation of local bus and street railway fares constituted part of the national transportation policy, and that local buses and street railways constituted part of the "national transportation system", it would not have repudiated that policy by enacting the proviso in Section 216(e), which prohibited such regulation.

Since the regulation of District bus and street railway fares is specifically denied to the Commission, and since the regulation of such local transportation—urban transportation—is contrary to the policy declared by Congress, the Commission cannot defeat that congressional purpose by trying to apply the national transportation policy, which Congress itself refused to do. Urban transportation in the District of Columbia

is not dependent for exemption from federal regulation on Section 203(b)(8). It is excluded by the whole body of the Motor Carrier Act. Therefore, the Commission cannot apply the national transportation policy to bus and street railway transportation in the District of Columbia and remove it from Section 203(b)(8), because it was never there to be removed. Transportation that "is essentially urban in character" (R. 823) is not contemplated within Section 203(b)(8).

The Commission's statement that in any event it is of opinion and finds that the application of the Act to the transportation involved is, in the language of Section 203(b)(7a), necessary to carry out the national transportation policy (R. 843) constitutes a misconception of the national transportation policy and a misconception of the transportation that comes within the exemption of Section 203(b)(8). Since urban, municipal transportation is not subject to the Motor Carrier Act, it cannot be found in the exemption in Section 203(b)(8); therefore, the bus and street railway operations in the District of Columbia were never within the exemption to be removed. The Commission has no authority to put a straw man in the exemption in order to knock him out. The national transportation policy does not grant, and was not intended to grant to the Commission, a power which Congress withheld by specific proviso. Justification for exercise of federal power within what would otherwise be domain of state power must clearly appear. *State of Florida* v. *United States*, 282 U. S. 194, 211-212.

Amicus curiae does not believe that the national transportation policy calls for an adjustment in rates merely because of dissatisfaction among certain employees with fares to their places of employment. Preferences in places of employment do not constitute a sound basis for rate-making or regulatory power. In *Interstate Commerce Commission* v. *Northern Pacific Ry. Co.*, 216 U. S. 538, 545, this Court said preferences of travelers did not justify the exertion of power to establish through routes and joint fares. Neither does *amicus curiae*

believe that the level of salaries nor the pecuniary ability of passengers is an element of the national transportation policy. Furthermore, the Interstate Commerce Commission itself has said that the applicability of rates "is not dependent on the ability of the shipper to pay." *Stuart* v. *Norfolk & Western Ry. Co.*, 191 I. C. C. 13, 18. We have found no decision of this Court holding that the passengers' ability to pay is an element in rate-making.

CONCLUSIION

It is respectfully submitted that the orders of the Interstate Commerce Commission are illegal and void, because the Commission had no authority to issue them. The judgment of the lower court should be affirmed.

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Office - Supreme Court, U. S.
FILED
JUN 15 1945
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL.

PETITION FOR REHEARING.

G. THOMAS DUNLOP,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL.

PETITION FOR REHEARING.

The Appellees, Capital Transit Company, Alexandria, Barcroft and Washington Transit Company and Washington, Virginia & Maryland Coach Company, respectfully petition the Court to grant a rehearing in the above entitled case with regard only to the second part of the Opinion and as grounds for the petition state as follows:

1. The Court has apparently laid down a new rule of law—never heretofore understood to be the law—namely, that if a large number of passengers board a local city bus or street car, with the unexpressed intention of using another bus company to cross a State line, an interstate through route exists even though there are no through tickets or arrangements for through passage. On that basis through routes could be said to exist between the buses and street cars of Transit Company on the one hand,

and the Pennsylvania Railroad and the Greyhound bus lines, as well as every other interstate bus line and railroad in the United States. This is a major innovation in motor carrier law and if the Court intended that result, it ought clearly to so hold.

The three cases cited by the Court dealt with freight traffic, by railroad, over routes for which arrangements for through carriage had been made by the participating carriers. Here the case involves *passenger* traffic and there was no arrangement of any kind whatever between Transit Company and the Virginia companies.

Exactly as this Court pointed out in New York Central R. R. v. Mohney, 252 U. S. 152, 156, the only contract between the carrier and a passenger who boards a local vehicle and pays the local intrastate fare, is to carry him on a local intrastate journey and his mental state cannot change the terms of that fare contract. In that case this Court held that one who boarded a train with a pass good only within the State of Ohio, intending to buy an interstate ticket at the end of the intrastate ride, was entering upon an intrastate (not interstate) journey. That decision is apparently overruled in the present case.

2. The Court apparently misunderstood the facts as to the total absence of any interconnecting facilities or arrangements between the Transit Company and the Virginia companies. The Virginia companies operate from points in the downtown area of Washington to points throughout the northern part of Virginia, including the four government installations involved in this proceeding. Transit Company conducts no bus operations into Virginia except the temporary, wartime, rush-hour service to the Pentagon only. There are not and never have been any arrangements or combination fares between the companies; the operations are wholly independent. The decision of the Court creates through routes from any point in the District of Columbia to any of the four installations in Virginia and, for all practical purposes, to any point in northern

Virginia. Just as hundreds of District residents travel to the four installations to work, so do hundreds of Virginia residents come into Washington to work. The same situation undoubtedly exists in every big city in the country which is near a State line.

There are no transfer privileges between companies. A passenger does not merely step from one vehicle to another, but employs a separate company for the second half of his journey. The Court apparently understood that a transfer from a Transit Company local street car or bus entitled the holder to travel to the Pentagon on the lines of that company. That is not true. The passenger on the Q-2 lines pays a five cent fare just as does the passenger on the R-2 line. It is true that in order to board a Q-2 bus, the passenger must exhibit also a transfer or other evidence of a District fare. No transfer is permissible on the R-2 line.

3. Commutation fares are not specifically mentioned in the Opinion but the effect of the decision is to hold that the Commission may lawfully *require* the establishment of such fares, thus upsetting an administrative construction of 35 years' standing. The rule has been that the Commission has no such power. (Appellees' Brief, pp. 56 et seq.). Joint commutation fares have never existed between any of the Appellees.

4. The fares prescribed for the Transit Company violate an express prohibition in the Motor Carrier Act and deprive that company of even the cost of its operations.

Section 216(e) of the Act provides:

> "That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation or for any service connected therewith, * * * for any * * purpose whatever."

In the present case the Commission prescribed the fares as follows: (R. p. 814):

> "For local application over bus and bus-streetcar lines of respondent Capital Transit Company * * *fares the same as those maintained within the District of Columbia* * *".

The "fare maintained within the District of Columbia" is fixed by local authority and entitles the holder to a ride *within* the District of Columbia only—an intrastate ride. The Commission orders the same fare to be good also for interstate transportation into and through a portion of the State of Virginia.

Furthermore, the Commission found that the out-of-pocket cost to Transit Company of the Pentagon operation was five cents per passenger per one-way trip. That was the exact fare charged for the Pentagon trip, now to be eliminated under the order of the Commission, sustained by this Court.

The Court has apparently held in its opinion in this case that the Interstate Commerce Commission can enlarge the scope of the service to be rendered for an intrastate fare fixed by local authority, and can do so without regard to or allowance for the extra costs involved. We submit that such a rule would be an innovation which should be clearly stated if the Court intends that result.

5. The proposed fares will adversely affect the war effort since they will result in unevenly spreading the passenger load and overburdening limited facilities. The fare prescribed for Transit Company to the Pentagon is substantially less than the joint rate (13⅓ cents) prescribed for the same trip on vehicles of two different companies. The inevitable effect will be to shift to Transit Company a substantial portion of the passenger traffic from the Virginia companies. The latter are in a better position to carry the passengers on their return trips to Virginia. Transit Company cannot, under war conditions, add to the

service to care for such additional load without robbing its regular service in the District of Columbia—a result inimical to the public interest.

6. This is a case of national importance and the principles established by the decision are applicable to every local transportation operation in the country.

It is respectfully urged that this petition for rehearing be granted.

Respectfully submitted,

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F. G. AWALT,
RAYMOND SPARKS,
Attorneys for Capital Transit Company

ROBERT E. QUIRK,
Attorney for Alexandria, Barcroft and Washington Transit Company

J. NINIAN BEALL,
Attorney for Washington, Virginia & Maryland Coach Company

CERTIFICATE OF COUNSEL.

We, counsel for the Appellees herein named, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

G. THOS. DUNLOP,
E. BARRETT PRETTYMAN,
F. G. AWALT,
RAYMOND SPARKS,
ROBERT E. QUIRK,
J. NINIAN BEALL,

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IN THE

Supreme Court of the United States

October Term 1944

No. 695

UNITED STATES, et al

v.

CAPITAL TRANSIT COMPANY, et al

PETITION OF APPELLEE, WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY FOR MODIFICATION OF OPINION

J. NEVIAN BEALL,
Attorney for
Washington, Virginia & Maryland
Coach Company.

June 15, 1945.

WARREN PRINTING CO., WASHINGTON, D. C. — RECTOR P. BYRD, MANAGER

IN THE

Supreme Court of The United States

October Term 1944

No. 663

UNITED STATES, et al

v.

CAPITAL TRANSIT COMPANY, et al

PETITION OF APPELLEE, WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY FOR MODIFICATION OF OPINION

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Washington, Virginia & Maryland Coach Company respectfully represents:

Your Honorable Court, by its opinion filed May 28, 1945, in the above-entitled case, misconceived certain fundamental facts. If the mandate should issue to the court below to vacate its decree, enjoining the order of the

Interstate Commerce Commission, such mandate would, of course, have the effect of reestablishing the order of the Interstate Commerce Commission in its entirety. We do not find from a reading of the opinion of this Honorable Court that such a result was intended.

Point I

The opinion of this Court rationalizes the order of the Commission, establishing joint fares between the street railway system of the Capital Transit Company and the bus system of the Capital Transit Company, on the basis of an established course of conduct by the Capital Transit Company. There is no record whatever to support the proposition that there was any conduct on the part of the Washington, Virginia & Maryland Coach Company upon which either this Court or the Interstate Commerce Commission could rationalize an order for joint fares. In the absence of a course of conduct on the part of the parties, which conduct would subject them to the jurisdiction of the Commission, the order of the Commission requiring joint fares between the Capital Transit Company and the Washington, Virginia & Maryland Coach Company, is in the teeth of Section 216(a) of Part II of the Interstate Commerce Act, for the reason that the Capital Transit Company is not a "like common carrier" with the Washington, Virginia & Maryland Coach Company.

Point II

It is not clear whether this Court, by its opinion, intended to confer permanent jurisdiction on the Commission to enforce its order, or merely found that the Commission's power arose out of the war emergency and in which event, such power would cease to exist upon the termination of the war emergency.

Wherefore, petitioner respectfully requests that the Court modify its opinion and clarify it in the respects indicated, before mandate issues.

Respectfully submitted,

J. NINIAN BEALL

Attorney for
Washington, Virginia & Maryland
Coach Company.

June 15, 1945.

Certificate of Counsel

I hereby certify that I am counsel for the appellee and petitioner in the foregoing petition, that the same is presented in good faith and not for delay.

J. NINIAN BEALL

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Office - Supreme Court, U. S.
FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, ET AL.

PETITION OF APPELLEE ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY FOR A REHEARING.

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Southern Building,
Washington, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 663

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellants,

vs.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, ET AL.

PETITION OF APPELLEE ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY FOR A REHEARING.

To the Honorable Supreme Court of the United States:

Comes now the above named appellee, Arlington and Fairfax Motor Transportation Company, and presents this petition for a rehearing in the above entitled cause, and, in support thereof, respectfully shows:

There are several points upon which appellee feels that the decision of the Court should be reexamined, but it has

limited itself in this petition to only two, each of which is national in scope and so far reaching in effect as to seem to require reconsideration and a rehearing of the case. These points are (1) The question of the initiation of commutation fares, and (2) The question of through routes and joint rates.

I

The Court Should Rehear and Re-examine the Question of Commutation Fares

The power of the Commission to initiate commutation or special fares (where none had theretofore ever existed) against the will and over the protest of the carrier affected is a matter of great importance which, it is respectfully submitted, has not been adequately dealt with by the Court in the majority opinion. The matter is one which concerns not only the carriers in this proceeding, but *all* carriers, large and small, by rail, by water and by motor. The lack of power to *compel* the issuance of special or commutation fares where none had been voluntarily established by the carrier was vigorously asserted by Commissioner Patterson in his dissenting opinion concurred in by Commissioner Miller (R. 855) where he concluded his discussion of the subject by saying:

> *"We have never claimed or exercised such power. I do not think that we have it."*

His opinion is strongly buttressed by an unbroken line of cases in the Commission, and in this court.[1]

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[1] *Note: Interstate Railway Company* v. *Massachusetts*, 207 U. S. 79, referred to by appellants (brief U. S. p. 41) as holding that a state law which fixed special rates for school children had been upheld by this Court, failed to state to the court that the ground of this Court's decision was that a law in respect of said rates was in force on the statute books of Massachusetts at the time the Interstate Railway Company was incorporated, and its charter was therefore taken subject to the conditions that

The point was urged by appellees here and in the court below. (See appellees' brief, pp. 56-66 inclusive.)

Such an important question of power—so strongly denied by members of the Commission itself—would seem to require a full consideration and discussion by the court in its opinion. At present this important question of law seems to be disposed of by the blanket statement at the end of the opinion that

> "Other contentions urged by the carriers have been considered, but need not be discussed since we are satisfied with the disposition made of them by the Interstate Commerce Commission."

The Court's opinion thus summarily determines the existence of a power in the Commission never before held to exist, without any discussion whatsoever—in fact, without even mentioning the point.

This appellee urges that reconsideration be given to this point by the Court, and believes that if this is done the Court will determine that the power *to require* commutation fares does not in fact exist.

II

The Court Should Rehear and Re-examine the Question of Through Routes and Joint Rates

It is respectfully submitted that the Court's opinion is not clear on the subject of through routes and joint rates and that this question should be re-examined. The opinion says (slip opinion p. 4):

> "The Commission found, however, that the Transit Company had voluntarily established through routes,

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special rates for school children might be required. Moreover, as pointed out by Mr. Justice Holmes, in stating his *personal opinion* (after stating the basis of the court's opinion above) the action could have been upheld under the police power of the state, a power which is non-existent here. The Interstate case is argument for, rather than against, appellees' position.

and contends its finding has support in the evidence and consequently sustains its order."

Assuming that there could have been a finding by the Commission of a through route established by the Capital Transit Company *with itself*, there was certainly no evidence upon which a finding that the Capital Transit Company had established a through route with any of the other carriers could be based. Nor had any of the other carriers established through routes with each other. So far as the existence of a through route on the part of this appellee is concerned, there simply was and is no evidence to that effect, and it is not the fact. We challenge appellants to point to any such evidence.

Does the court's opinion mean that although no through route exists between the Arlington and Fairfax Motor Transportation Company and the Capital Transit Company, nevertheless, the Commission may compel the establishment of such through route merely because the Court is satisfied that the Capital Transit Company established a through route with itself *on its own line?* If so, it is respectfully submitted that such a ruling is so radical a one that reconsideration should be given to the question. Is it not possible that the distinction between the power *"to require through routes"* (which power the Commission does *not* possess—except between like carriers) and the power *"to require joint fares"* when through routes between carriers have already been voluntarily established (which power the Commission does possess), may have been lost sight of in the majority opinion? The Capital Transit Company is not a "like common carrier of passengers by motor vehicle" with the Arlington and Fairfax within the meaning of Section 216(a) of the Interstate Commerce Act, and the Court's opinion does not unequivocally find that it is. Much is left to conjecture.

Since almost every street car line in the United States is today supplemented by bus operations, may not the Court's opinion mean that every such local street car operation may be forced into the establishment of through routes and joint fares with every interstate common carrier of passengers by motor behicle which enters its territory? If so, then the embargo which Congress laid on the power of the Commission to require through routes would, as a practical matter, be nullified.

Appellees should be given an opportunity to reargue these important questions.

Conclusion

From the foregoing reasons it is respectfully urged that this petition for rehearing be granted, and that the decree of the United States District Court for the District of Columbia be, upon further consideration, affirmed.

Respectfully submitted,

HUGH H. OBEAR,
F. K. LANE,
Counsel for Arlington and Fairfax Motor Transportation Company, Appellee.

Certificate of Counsel

We, counsel for the Arlington and Fairfax Motor Transportation Company, one of the appellees above named, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

HUGH H. OBEAR,
F. K. LANE,
Counsel for Arlington and Fairfax Motor Transportation Company, Appellee.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

Petition of the State Corporation Commission of the State of Virginia, Appellee, and the National Association of Railroad and Utilities Commissioners, Amicus Curiae, for a Rehearing.

HENRY E. KETNER,
Attorney for said State Corporation Commission,
State Office Building,
Richmond, Va.

FREDERICK G. HAMLEY,
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Washington, D. C.

June 15, 1945.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

Petition of the State Corporation Commission of the State of Virginia, Appellee, and the National Association of Railroad and Utilities Commissioners, Amicus Curiae, for a Rehearing.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Come now the State Corporation Commission of the State of Virginia, appellee, and the National Association of Railroad and Utilities Commissioners, amicus curiae, and present this petition for a rehearing in the above entitled cause, and, in support thereof, respectfully show:

There are several points upon which appellee and amicus curiae believe that the decision of the Court should be reexamined, but they have limited themselves in this petition to only three, each of which is of such far reaching national

importance as to seem to justify a rehearing and reconsideration of the case. These points are (1) The question of the Commission's jurisdiction under the National Transportation Policy, (2) The question of the failure and refusal of the Commission to refer the proceeding to a properly constituted Joint Board for a hearing and recommended report and order, and (3) The question of jurisdiction over the street railway operations of the Transit Company.

At the outset we deem it desirable to emphasize that appellee and amicus curiae are primarily interested in and concerned with the jurisdictional and procedural questions as here involved, rather than with the particular fares under consideration.

While this proceeding involves only the local, intraterminal fares in a single community, the Court's rulings upon the jurisdictional and procedural questions will establish precedents which will be national in scope, and which will greatly affect the future relationship between federal and state regulatory agencies.

I.

The Court should rehear and reexamine the question of jurisdiction under the National Transportation Policy.

The question of the Commission assuming jurisdiction under the National Transportation Policy is obviously of national importance. The Commission assumed such jurisdiction by making a finding that at present the transportation in question is not adequate to meet the needs of the national defense.

At page 4 of its opinion on this point the Court says:

> "A number of witnesses testified as to the dissatisfaction of employees with the prevailing rates. If evidence was necessary to prove that unreasonably high rates were calculated to disturb the morale of workers forced to pay them, and thus to impair the national de-

fense program, there can be no doubt but that the findings of the Commission were well supported."

A War Department witness testified that the personnel turnover or rate of separation was 5.3 per cent for the entire metropolitan Washington area as compared with 4.7 per cent for the Virginia installations. (Record, page 80.)

Counsel for the War Department stipulated that an insignificant number of employees mentioned fares as a reason for leaving the service of the government in the Virginia installations. (Record, pages 614-616.)

There is no substantial evidence to support the finding of the Commission that the bus fares here involved are a cause of dissatisfaction among the employees. Even if it be assumed that the fares in question are unreasonably high, that standing alone does not give the Commission jurisdiction. It must be proved by *substantial evidence* that the high fares are retarding the war effort and in conflict with the interest of national defense. No such showing has been made on this record.

The information shown on the questionnaire, Exhibit 33, 25,000 of which were distributed to employees in the Virginia installations, is obviously more important and of more value than the oral testimony of a relatively small number of individual employees.

The opinion of the Secretaries of both War and Navy, or others, unsupported by adequate facts, may not be substituted for concrete data. *B. & O. R. Co.* v. *U. S.*, 298 U. S. 349, 379.

We respectfully urge that reconsideration be given to this point by the Court and believe that if this is done the Court will determine that the Commission was without jurisdiction under the National Transportation Policy.

II.

The Court should rehear and reexamine the question of the failure and refusal of the Commission to refer the proceeding to a properly constituted Joint Board for a hearing and recommended report and order.

The opinion of the Court makes no reference to this point, unless this important procedural question is to be deemed disposed of by the blanket statement at the end of the opinion that:

> "Other contentions urged by the carriers have been considered, but need not be discussed, since we are satisfied with the disposition made of them by the Interstate Commerce Commission."

Section 205(a) of the Interstate Commerce Act provides, *inter alia*, that the Commission *shall* refer to a Joint Board for appropriate proceedings thereon "complaints as to rates, fares, and charges of motor carriers," where such complaints involve not more than three states.

It is our contention that if the Commission did have jurisdiction over these fares then it should have referred the proceeding to a properly constituted Joint Board for a hearing and recommended report and order in compliance with the provisions of the above referred to statute.

The Commission considered this proceeding "in the nature of a complaint" even though it was termed an "investigation" in the original order. (R. 10.)

All of the transportation performed by the carriers here involved is admittedly local in character. The great preponderance of such transportation is intrastate in character. Many intricate local problems are involved in this proceeding. It must be apparent that the local authorities in Virginia and the District are peculiarly well informed respecting these local matters and the Commission should have the benefit of the opinion and knowledge of these local authorities in reaching its decision.

The opinion of this Court in *Palmer* v. *Massachusetts*, 308 U. S. 79, amply supports the view that words and meanings not clearly expressed in statutes of this character should not be read into the statute by implication where the effect is to deprive state regulatory authorities of powers which Congress intended to leave them.

The ordinary meaning of the plain language in Section 205 (a) of the Interstate Commerce Act compels the conclusion that it was the Commission's duty to refer the instant proceeding to a Joint Board for hearing and recommended report and order, assuming the Commission had jurisdiction over the operations involved.

This interpretation of the statute above referred to is strongly supported by the opinion of this Court, written by Mr. Justice Frankfurter, in *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, where at pages 617 and 618 of its opinion the Court said:

> "For the ultimate question is what has Congress commanded, when it has given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. The idea which is now sought to be read into the grant by Congress to the Administrator to define 'the area of production' beyond the plain geographic implications of that phrase is not so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it. After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

III.

The Court should rehear and reexamine the question of the Commission's jurisdiction over the street railway operations of the Transit Company.

This important question of law was not mentioned in the Court's opinion. It apparently was disposed of by the blanket statement at the end of the opinion, above quoted.

The Court's opinion thus summarily determines the existence of a power in the Commission never before held to exist, without even mentioning the point. The following statement does appear at page 2 of the opinion:

> "The Commission treated Transit Company's local bus and street car business as an integrated unit,"

But the Court makes no discussion of this legal point of national importance.

Congress has not placed street car operations such as those carried on by the Transit Company under the Commission's jurisdiction.

This is the first time the Commission has asserted jurisdiction over street railways under the Motor Carrier Act (or any other act). The fact is that Section 203(a) (13) of the Motor Carrier Act, defining the term "motor vehicle," expressly excludes street cars from its provisions. It even excludes trolley buses "furnishing local passenger transportation similar to street railway service."

If this theory is sustained in the present case, practically all street car systems in the country will come fully under the Commission's jurisdiction.

As Commissioner Patterson said in his dissenting opinion:

> "The action here taken by the majority will constitute a precedent for the assumption, under similar circumstances, of jurisdiction to regulate local and joint fares in connection with street railway lines serving municipalities throughout the country." (R. 855.)

Certainly Congress did not intend to give the Commission any such broad and sweeping power.

Conclusion.

For the foregoing reasons it is respectfully urged that this petition for rehearing be granted, and that the decree of the United States District Court for the District of Columbia be, upon further consideration, affirmed.

Respectfully submitted,

HENRY E. KETNER,
Attorney for State Corporation Commission of the State of Virginia, appellee,

and

FREDERICK G. HAMLEY,
Attorney for the National Association of Railroad and Utilities Commissioners, amicus curiae.

Certificate of Counsel.

We, attorneys for the State Corporation Commission of the State of Virginia, appellee, and the National Association of Railroad and Utilities Commissioners, *amicus curiae*, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

HENRY E. KETNER,
Attorney for State Corporation Commission of the State of Virginia, appellee,

and

FREDERICK G. HAMLEY,
Attorney for the National Association of Railroad and Utilities Commissioners, amicus curiae.

SUPREME COURT OF THE UNITED STATES.

No. 663.—October Term, 1944.

The United States of America and Interstate Commerce Commission, Appellants,
vs.
Capital Transit Company, Alexandria, Barcroft and Washington Transit Company, Arlington and Fairfax Motor Transportation Company, et al.

On Appeal from the District Court of the United States for the District of Columbia.

[May 28, 1945.]

Mr. Justice Black delivered the opinion of the Court.

A federal district court of three judges, one judge dissenting, set aside and permanently enjoined enforcement of an order of the Interstate Commerce Commission, 258 I. C. C. 559, on the ground that the findings were inadequate and that the Commission acted beyond its jurisdiction. 56 F. Supp. 670.[1] The case is here on direct appeal. 28 U. S. C. § 345.

At the request of the Secretaries of War and the Navy, the Interstate Commerce Commission instituted an investigation into the reasonableness of the fares of four carriers, transporting passengers by bus between points in the District of Columbia and nearby points in the State of Virginia, where are located certain military and naval offices and installments employing more than 40,000 government workers. More than half these workers live in the District so that the number of individual passenger trips to and from government work on the four motor lines is in excess of 31,000 per day. The fares of the different lines were not identical for performance of substantially the same interstate transportation, and dissatisfaction of Army and Navy employees and officials had arisen on the ground that the charges of all the companies were excessive. The Commission, after a hearing, found some existing fares to be reasonable and others unreason-

[1] The district court had previously set aside a Commission order in the same case because of inadequate findings. 55 F. Supp. 51, 256 I. C. C. 769. Thereafter the Commission heard additional evidence, made additional findings and entered the order here under review.

able. Its order required some of the rates to be reduced but permitted others to be increased.

A complicating factor arose from the distinctive type of business carried on by Capital Transit, one of the four companies transporting passengers to and from the Virginia government agencies. In addition to its District-Virginia bus service, it operated an urban and suburban transportation system, carrying passengers both by bus and streetcar. Since District terminals of all the bus companies were located in or adjacent to the central business sections, most government employees, in going to and returning from their work, were compelled to begin or complete their trips by utilizing buses or streetcars of Capital Transit. It accorded to its own bus and streetcar passengers, but denied to passengers on other Virginia buses, a privilege of transfers to and from some of its Virginia buses which lowered the total fares between District residences and their Virginia places of work. The Commission treated Transit Company's local bus and streetcar business as an integrated unit, and its findings, supported by evidence, show that its ~~inter~~ intra-company transfer practices were the equivalent of establishment by Transit of through interstate routes with joint rates to and from District residences to the Virginia points. Accordingly it ordered that analogous joint arrangements as to fares, including transfer privileges, be established between Transit and the other bus lines carrying passengers to and from Virginia government agencies. This, and other elements of the Commission order not passed on by the district court, were separately attacked here. In order that final disposition of the case may not be further delayed, we shall consider all questions argued before us.

First. It is argued that the Commission is without jurisdiction to regulate any of the District-Virginia transportation here involved. The argument emphasizes that the movement begins and ends in a single "community", all within an area which the Commission has previously recognized as the "commercial zone" of Washington. 3 M. C. C. 243. We are referred here to the holding of this Court in 1912 that a street-railway, carrying passengers between Omaha, Nebraska and Council Bluffs, Iowa, was "local", serving the use of a "single community", and was not the kind of "railroad" which the Interstate Commerce Act empowered the Commission to regulate. *Omaha Street Ry.* v. *United States*, 230 U. S. 234. Cf. *United States* v. *Village of*

Hubbard, 266 U. S. 474, 479-480. The same principle, we are told, should exclude similar local bus operations. But this Court's decision in the *Omaha* case did not hold that Congress could not authorize the Commission to regulate movements that took place across state lines in a single local community. The power of Congress over such movements cannot be doubted. The *Omaha* case only decided that Congress had not granted such power to the Commission under the law as it then existed.

We must now test the Commission's power in this case by the provisions of a statute enacted subsequent to the *Omaha Street Ry.* case, *supra*, the Motor Carrier Act, 49 Stat. 543, under which the order here was entered. Section 203(b) of that Act provides the controlling rule. It specifically defines the circumstances under which the Commission can regulate interstate activities which happen to take place in a single "commercial zone."

That Section, to a limited extent, excludes from the Commission's jurisdiction "The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities . . . ." Other parts of the same Section authorize the Commission to apply the Act to these zone activities, however, if it finds that (1) "such application is necessary" to carry out the national transportation policy declared in the Act, or (2) if the carrier is not "engaged in . . . intrastate transportation of passengers over the entire length of such interstate route." The Commission held that the four bus companies came within both these exceptions and therefore were not excluded from its jurisdiction. We need not consider whether they came within the second exception, because of our conclusion that the Commission's findings justified its order under the first exception. Those findings were that it was necessary for the Commission to exercise its jurisdiction in order to carry out the Act's declared policy, "to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, . . . to the end of developing, coordinating, and preserving a national transportation system . . . adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense." 54 Stat. 899.

On its second hearing the Commission heard evidence from employees of the Army and Navy as to dissatisfaction with the fares. The Secretaries of both War and Navy made complaints

concerning the situation produced by the rate structure. A number of witnesses testified as to the dissatisfaction of employees with the prevailing rates. If evidence was necessary to prove that unreasonably high rates were calculated to disturb the morale of workers forced to pay them, and thus to impair the national defense program, there can be no doubt but that the findings of the Commission were well supported. It is to be remembered that these were interstate rates for interstate travel which applied almost exclusively to workers engaged in national defense. Neither the District nor Virginia had power adequately to regulate the rates; nor had they attempted to do so. Their regulation was rightfully a matter of concern to Army and Navy Departments charged with the serious responsibility of conducting a war. The employees worked in the very center of activities essential in that cause. Congress unequivocally reserved to the Commission power to regulate reasonableness of interstate rates in the light of the needs of national defense. The findings of the Commission on this issue were clear and complete, cf. *Yonkers* v. *United States*, 320 U. S. 685, and justified the Commission in exercising its jurisdiction.

Second. It is argued that the Commission exceeded its authority in prescribing joint fares between the Capital Transit Company and the other bus companies. This contention rests on two assumptions grounded upon the difference in the way the parties view the facts and the law governing them. The first argument of the companies is substantially the same as the one just rejected—that all of the Transit Company's operations, by both bus and streetcar, are purely local and therefore not subject to the Commission's jurisdiction. The second contention is this: Sections 216(c) and (e) permit but do not require motor carriers to establish through routes and joint rates with other types of carriers; since the companies view the facts as failing to show that through routes or joint rates have voluntarily been established as to Transit's streetcars and the Virginia buses, they argue that the Commission cannot require their establishment. The Commission found, however, that Transit had voluntarily established through routes, and contends its finding has support in the evidence and consequently sustains its order. It also relies on its power under Section 216(e) to prescribe through rates for all segments of an interstate transportation carried on between motor carriers. This power it argues is broad enough to auth-

orize an order for joint rates for interstate carriage conducted by a company which, as it found this one did, uses streetcars and buses as an integrated unit in carrying out interstate transportation. We think that under the facts and circumstances shown the Commission's findings are not subject to attack and that it acted within its statutory authority in prescribing the through rates.

As previously pointed out, twice a day more than 15,000 government employees traveled between the Virginia agencies and their homes via one of the four bus systems. Most of them either went to or from these bus terminals from or to their homes over any of Transit's then available buses or streetcars. Their travel was at certain hours each day, at which special rush hour, buses and cars were made available for their carriage. Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia going bus at their place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District terminii of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate. *B. & O. S. W. R. R. Co.* v. *Settle*, 260 U. S. 166. And the fact that, except as to Transit, they paid a combination of two rates, one for travel wholly within the District, and the other for travel between the District and Virginia, and the journey from their residences to Virginia and back again was taken in two segments, does not mean that the total interstate trip was not on a "through route." *Virginian Ry.* v. *United States*, 272 U. S. 658, 666-667; *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 139-140.

Moreover, Transit Company itself conducted its own traffic to and from Virginia and District residential points as one continuous journey. As previously noted, a Virginia worker could board its local bus or streetcar, ride to a District terminal of Transit's Virginia bound bus, board it, and obtain the benefit of a transfer supplied by Transit. So also could Transit's passenger get the benefit of a transfer on the return journey home from work. Had Transit not owned the separate vehicles used in the

transportation, these arrangements would have constituted "joint rates" for a "through route" within the statutory meaning of the term. As carried out by Transit the arrangements were the exact equivalent of transportation on a "through route" for a joint fare. Had Transit not owned the vehicles transporting the passengers on each leg of this interstate journey, it could not have established consistently within the Interstate Commerce Act, joint rates with a particular Virginia bus line, to the exclusion of its competitors, for the reason that one given a monopoly of through traffic could "soon be able to drive its competitors out of business." *United States et al.* v. *Pa. Railroad, et al.*, No. 47-48, decided January 29, 1945, slip opinion, pp. 4-5. The Motor Carrier Act, which is part of the Interstate Commerce Act, need not be interpreted so as to permit the accomplishment of such a result.

Section 216(e) expressly authorizes the Commission to declare unlawful any unreasonable, preferential, or prejudicial rule, classification, regulation or practice arising from any "individual or joint rate, fare, or charge, demanded, charged or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carriers by railroad . . ." and to "prescribe the lawful rate, fare, or charge . . . thereafter to be observed. . . ." We think that under the Commission's findings, supported by evidence, it did have power to declare these rates unreasonable and unlawful as it did, and thereafter to prescribe the lawful rate to be charged for the interstate trip. This did not, as argued, constitute a regulation of intrastate commerce.

Other contentions urged by the carriers have been considered, but need not be discussed, since we are satisfied with the disposition made of them by the Interstate Commerce Commission. Finding no error in the order of the Commission, the judgment of the district court declining to enforce it is

Reversed.

Mr. Justice ROBERTS is of the opinion that the Commission had no jurisdiction of the fares in question, for the reasons set forth in the opinions below, 55 F. Supp. 51, and 56 F. Supp. 670. Mr. Justice REED and Mr. Justice DOUGLAS dissent from part Second of the opinion.